

Alabama Department of Transportation
Disadvantaged Business Enterprise Program

Revised May 2010



In accordance with 49 CFR Part 26, the following revision to the ALDOT Disadvantaged Business Enterprise Program is submitted. This document supersedes any and all previous DBE Program documents.

Submitted:

D. J. McInnes
Transportation Director

Approved:

Mark D. Bartlett, P.E.
Division Administrator
Federal Highway Administration

ALABAMA DEPARTMENT OF TRANSPORTATION

DBE PROGRAM

Objectives/Policy Statement (§26.1, 26.23)

The Alabama Department of Transportation (ALDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U. S. Department of Transportation (US DOT), 49 CFR Part 26.

This statement is attached as Attachment 1

Applicability (§26.3)

ALDOT is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat 1914, Titles I, III and V of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178 and Titles I and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for Users (SAFETEA-LU) Public Law 109-59.

ALDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Public Law 102-240, or by Federal transit laws in Title 49, USC or Titles I,II, and V of TEA-21, Public Law 102-178 or Titles I, II,III and V of SAFETEA, Public Law 109-59.

Definitions of Terms (§26.5)

The terms used in this program have the meanings defined in 49 CFR Part 26. See Attachment 2

Nondiscrimination (§26.7)

The Alabama Department of Transportation (ALDOT) will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, ALDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Information Collection and Reporting (§26.11)

Bidders List (§26.45 (c) (2))

ALDOT will utilize a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on US DOT- assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The Bidder's List of Quoters (ALDOT Form HR-DBE as shown in Attachment 3) List will include the name, address and DBE/non-DBE status of each quoter to each bidder on each project. Additionally, during the first quarter of each calendar year, we will survey the firms listed in each Bidder's List of Quoters to ascertain the date the firm was established and the gross receipts using brackets as defined in section 26.11 (c) (2).

Federal Financial Assistance Agreement Assurance (§26.13)

ALDOT has signed the following assurance, applicable to all US DOT-assisted contracts including sub recipients and their administration:

The Alabama Department of Transportation shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and a failure to carry out its terms shall be treated as a violation of this agreement.

Upon notification to the Alabama Department of Transportation of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

We will ensure that the following clause is placed in every US DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

DBE Program Updates (\$26.21)

We will continue to carry out this program until all funds from US DOT financial assistance have been expended. We will provide to US DOT updates representing significant changes in the program.

DBE Liaison Officer (DBELO) (\$26.25)

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that ALDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Transportation Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 4 to this program.

The DBELO is responsible for developing, implementing, monitoring and supervision of the DBE program, in coordination with other appropriate officials.

Specific duties of the DBELO include but are not limited to:

1. Gather and report statistical data and other information as required by US DOT.
2. Gathers data to set ALDOT annual DBE Goal.
3. Ensures that bid notices and proposals are made available to DBEs in a timely manner.
4. Analyzes ALDOT's progress toward goal attainment and identifies ways to improve progress if applicable.
5. Makes available through the various Supportive Services Providers, assistance in Preparing bids, obtaining bonding and insurance.

DBE Liaison Officer

The DBE Liaison Officer (Mr. Ron Green) is responsible for implementing all aspects of the DBE program in coordination with other appropriate officials. The DBE Liaison Officer has direct, independent access to the Transportation Director concerning DBE program matters. The direct DBE Liaison Officer has a staff to administer the DBE program which is cited in the following paragraphs. Questions pertaining to the administration of the DBE Program can be directed to the DBELO at the following address:

Mr. Ron Green
Alabama Department of Transportation
Personnel and Compliance Bureau
1409 Coliseum Blvd.
Montgomery, AL 36110
334-242-6329

The DBE program is administered by personnel within the ALDOT Central Office which consists of the Construction Bureau and DBE Unit. Additional personnel with DBE responsibilities are assigned to the nine ALDOT divisions.

Accordingly, the Construction Bureau Contract Administrator and staff are responsible for project issues involving such items as prompt pay for DBEs and their adherence to required specifications. Personnel with the designation of Equal Employment Officers are assigned to the Central Office and each of the nine geographically dispersed Divisions who along with Administrative Support personnel have a direct responsibility to administer the DBE program. They administer the DBE program through the conducting of activities such as on-site interviews, compiling applications for presentations to certification committees, appearing before appeals committees to explain ALDOT's rationale for denial of certification, and scheduling supportive service classes for DBE firms who desire to increase their business proficiency.

Construction Bureau Contact Administrator

Geneva Brown	Construction Bureau DBE Contract Administrator	(334) 242-6788
Mike Reed	Asst. DBE Contract Administrator	(334) 242-6242

ALDOT Central Office DBE Unit Personnel, Duty Titles and Contact Numbers

John Huffman	DBE Unit Supervisor	(334) 244-6261
Charles Coleman	Certification and FTA Specialist	(334) 244-6262
Shona Harris	Certification and Supportive Service Specialist	(334) 244-6270
Anthony Miller	Certification Specialist	(334) 244-6264
Ronda Brooks	Certification and UCP Specialist	(334) 244-6265
Zakiya Wright	Administrative Support Assistant II	(334) 244-6260
Minnie Freeman	Administrative Support Assistant I	(334) 244-6267
Tamika London	Administrative Support Assistant I	(334) 244-6269

Equal Employment Officers by Name, Division and Contact Number

Shirley McCurley	First Division	(256) 582-2254 ext. 253
Randal Roe	First Division	(256) 571-7282
Angela Dunstan	Second Division	(256) 389-1484
Byron Browning	Third Division	(205) 328-5820
LaTanga Kennedy	Fourth Division	(256) 234-8407

Kim King	Fifth Division	(205) 554-2140
Undrea Hayes	Sixth Division	(334) 241-8558
James Duncan	Seventh Division	(334) 807-8774
Shelia Ford	Eighth Division	(251) 275-7275
Jim Hickman	Eighth Division	(251) 275-7222
Leon Malone	Ninth Division	(251) 470-8228

Internal Goal Setting Committee:

- **Committee Chairman-** Mr. Steve Walker
- **Appointing Official-** Mr. D. J. Mc Innes (Transportation Director)
- **Number of Members-** 8
- **Purpose** – To meet on a monthly basis and utilize the experience of committee members who hail from various backgrounds in construction and transportation to review plans and develop work in designated areas on federal aid projects.

Certification Committee:

- **Committee Chairman-** Mr. Jeffrey Brown
- **Appointing Official-** Mr. D. J. Mc Innes (Transportation Director)
- **Number of Members-** 8
- **Purpose-** To meet on a monthly basis and utilize the experience of committee members from various backgrounds in transportation to review applications for DBE Certification from applicants. Committee members review the applications prior to attending a certification meeting to enhance their understanding of the type of work performed, method of capitalization and other factors cited by the applicant which may affect certification or denial. Additionally, Equal Employment Officers within the DBE Section assist committee members by compiling presentations which summarize key elements for each application. The presentations are made to committee members and aid them to make decisions on the certification or denial of an application.

Appeals Committee:

- **Committee Chairman-** Mrs. Dee Rowe
- **Appointing Official-** Mr. D. J. McInnes (Transportation Director)
- **Number of Members-** 8
- **Purpose-** To meet on a monthly basis and utilize the experience of committee members who hail from various backgrounds in construction and transportation to review applications for DBE Certification for which the applicant/firm was denied certification

by the Certification Committee and to review the files of applicants/firms who have been decertified. Committee members will review the applications prior to attending a certification meeting to gain information regarding various aspects of the applicant and the firm that relate to Certification eligibility. Additionally, Equal Employment Officers within the DBE Section assist committee members by presenting a summary of the reason(s) for the applicant having been denied certification or having been decertified. These presentations are made to aid the committee members' understanding of the issues for which the applicant was denied certification or was decertified and the associated regulations governing certification.

Good Faith Efforts Committee:

- **Committee Chairman-** Mr. Ron Green
- **Appointing Official-** Mr. D.J. Mc Innes (Transportation Director)
- **Number of Members-** 5
- **Purpose-** To meet on a monthly basis and utilize the experience of committee members who hail from various backgrounds in construction and transportation to review efforts of prime contractors' use of DBE subcontractors in the attainment of DBE goals on designated federal aid projects. The Construction Bureau's DBE Contract Administrator is responsible for presentation and compilation of presentation data, with the assistance of division personnel that are provided to the committee members who make a determination regarding the Federal Aid Contractor's "good faith efforts" to meet DBE Contractual obligations.

MINORITY CONTRACTING QUALITY LIAISON COMMITTEE

- **Chairman –** Mr. Ron Green
- **Appointing Official –** D.J. McInnes
- **Number of Committee members –** 7
- **Purpose-** The purpose of the Minority Contracting Quality Liaison Committee (MCQLC) is to review, monitor and report contract awards between ALDOT and Minority/DBE Contractors in the State of Alabama. This may be accomplished through the use of effective Supportive Services Programs that are designed to provide training to Minority/DBE Contractors in an effort to enhance their business skills and increase their participation in ALDOT's Federal Aid highway construction activities. The Committee may utilize the guidance, expertise, and knowledge of personnel and official records within the Department's Construction Bureau. The Committee may also utilize the direction, advice and professional expertise of employees within the DBE Section of the Personnel and Compliance Bureau. A thorough assessment, with respect to the types of contracts and the number of contracts, will be conducted by the Committee, and recommendations may be presented to the Director of Transportation, or his designee, with respect to accomplishing the overall mission and purpose of this Committee.

DBE Financial Institutions (§26.27)

It is the policy of ALDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on US DOT- assisted contracts to make use of these institutions. These banks are listed in Attachment 5 and on the ALDOT Web Site in the DBE Program area. Currently, ALDOT funds are held by the State Treasurer who deposits them in Approved State Depositories. The banks listed in Attachment 5 are currently certified as Approved State Depositories.

Prompt Payment Mechanism (§26.29)

Prompt Payment

Section 109.08 of the ALDOT Standard Specifications applicable to all contracts awarded by ALDOT contains the following language concerning payments to subcontractors:

Retainage shall not be withheld from payments due to subcontractors or lower tier subcontractors.

The Prime Contractor shall make payment to all subcontractors, for the portion of the work satisfactorily completed by subcontractors, within 7 calendar days, not counting Saturdays and Sundays, of the Contractor's receipt of a partial payment from ALDOT.

The Prime Contractor shall submit to the Project Engineer a notarized certification of payment signed by an authorized company representative, for each estimate period. This certification shall read "Company's Name paid all subcontractors active on the project for Estimate Period No. 7 calendar days, not continuing Saturdays and Sundays, of the receipt of the partial payment covering said estimate period." The certification shall be submitted within sixty calendar days of the close of the estimate period for which it applies. Failure to furnish the certification in a timely manner may result in the withholding of further monthly payments or other punitive action until the delinquent certifications have been submitted. Should an ALDOT audit reveal that the Contractor did not make payments as stated in the certification, ALDOT will take punitive action against the Contractor. This action may include disqualification from bidding for a minimum period of six months.

Directory (§26.31)

ALDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory at least annually. We make the Directory available on the ALDOT Web Page at

www.dot.state.al.us A printed copy may be obtained by contacting the DBE Section of the Personnel and Compliance Bureau at 2720 Gunter Park Drive West, Montgomery, AL 36109 or phone (334) 244-6261.

Over-concentration (§26.33)

ALDOT has not determined that DBE firms are so over-concentrated in a certain type of work area as to unduly burden the opportunity of non-DBE firms to participate in this type of work. ALDOT will periodically investigate over- concentration and if ALDOT determines that over- concentration has occurred we will devise appropriate measures to address this over-concentration.

Business Development Program (§26.35)

ALDOT has not established a business development program. However, a Mentor Protégé Program is being developed.

Monitoring and Enforcement Mechanisms (§26.37)

The certification of DBE contractors with regard to disadvantaged status, business size and control will be the responsibility of ALDOT. (See Attachment 6) The solicitation of certified DBEs, and the good faith efforts to do so, including replacement of DBEs is the responsibility of the prime contractor and these requirements along with remedies, and enforcement provisions are contained in a project special provision which will become part of each US DOT assisted contract. See Attachment 7 for a copy of the Special Provision in effect at this writing. The current special provision will be found on our web site at www.dot.state.al.us under Bureaus then Construction.

We will require prime contractors to maintain records and documents of payments to DBEs for up to 3 years following completion of the contract. These records will be made available for inspection upon request by any authorized representative of ALDOT or US DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Payments due to DBEs and other program data requirements will be documented on ALDOT Form DBE 10. See Attachment 8 for the form and instructions. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

We will bring to the attention of U S Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that US DOT can take the steps (e.g.,

referral to Department of Justice for criminal prosecution, referral to the US DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.107. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

ALDOT will report DBE participation on a semi-annual basis using the US DOT revised form UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS of DBE awards as set out in Appendix B to 49 CFR Part 26.

Quotas (§26.43)

ALDOT does not use quotas in any way in the administration of this DBE program.

Overall goals (§26.45)

In accordance with Section 26.45 (f) ALDOT will submit its overall goal to FHWA every three years on or before August 1. This will begin in 2012. Before establishing the overall goal each year, ALDOT will consult with the Alabama Road Builders Association and the Alabama DBE Contractors Association to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ALDOT's efforts to establish a level playing field for the participation of DBEs. If other organizations or individuals make themselves known to ALDOT as wishing to participate in the Goal Setting program, ALDOT will consider their comments.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that ALDOT and FHWA will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Our overall goal submission to FHWA will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from FHWA.

A description of the methodology to calculate the overall goal and the goal calculations for Fiscal 2010 can be found in Attachment 9 to this program. This section of the program will be updated annually.

Contract Goals (§26.51)

ALDOT will use contract goals to meet any portion of the overall goal ALDOT does not project being able to meet its goal using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means. We will establish contract goals only on those US DOT- assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and size of contract goals will adapted to the circumstances of each contract (e.g. type and location of work, availability of DBEs to perform the particular type of work) We will express our contract goals as a percentage of the total amount of a US DOT assisted contract.

Good Faith Efforts (§26.53)

Information to be submitted

ALDOT treats bidders' compliance with good faith efforts requirements as a matter of responsibility. Each solicitation for which a contract goal has been established will require the apparent low bidder to submit the following information within the time defined in the contract proposal.

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform.
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

ALDOT Form OE-110 as shown in Attachment 10 will be used for this purpose.

Demonstration of good faith efforts

The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The Good Faith Effort Committee, consisting of senior ALDOT personnel with significant knowledge of the construction process, is responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The Committee will be assigned by the Director as an In-House Committee.

We will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before we commit to the performance of the contract by the bidder.

Administrative reconsideration

Within 5 calendar days of being informed by the Good Faith Effort Committee that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the Transportation Director who will act as the reconsideration official.

The reconsideration official will not have played any role in the original determination that the bidder did not make sufficient documentation of good faith efforts.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder will have opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration process is not administratively appealable to the U. S. Department of Transportation.

Good Faith Efforts When A DBE Is Replaced On A Contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the State Construction Engineer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Examples are as follows:

1. Letters from the Prime Contractor to the DBE
2. Letters from the Prime Contractor to ALDOT
3. Letters from the DBE to the Prime Contractor
4. Letters from the DBE to ALDOT

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our Construction Bureau will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the

contractor still fails to comply, the Construction Bureau may issue a termination for default proceeding.

Counting DBE Participation (§26.55)

We will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55 and our Construction Special Provision. A copy of the Special Provision in effect at this writing is in Attachment 7. The current Special Provision will be found on our web site at www.dot.state.al.us under Bureaus the Construction.

Certification (§§26.61, 26.91)

Burden of Proof

ALDOT will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in US DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

Procedures

Our certification requirements and documents are as listed in Attachment 6. For more information about the certification process or to apply for certification, firms should contact:

The Alabama Department of Transportation
Personnel/Compliance Bureau
2720 Gunter Park Drive West
Montgomery, AL 36109
(334) 244-6260

Personal Net Worth (§26.67)

We will require all disadvantaged owners of applicants and of currently certified DBEs whose eligibility under 49 CFR Part 26 we review, to submit a statement of personal net worth. Attachment 6 includes our personal net worth form and the documentation respondents must submit with it.

Unified Certification Program (§26.81)

ALDOT is currently working with other US DOT recipients to develop a UCP for the State of Alabama. When complete and approved by US DOT, a copy will be provided as Attachment 11 to this document.

Annual Documents Needed to Maintain Certification (§26.83 (a) & (c))

ALDOT will perform on-site reviews at five year intervals at the office of the firms. We will interview the principle officer(s) of the firm and review their résumés and/or work history. We will also perform on-site reviews to job sites if there are such sites in which the firm is working at the time of eligibility investigation.

“No Change” Affidavits and Notices of Change (§26.83 (i))

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the DBE’s application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a “no change” affidavit, and a PNW statement, meeting the requirements of §26.83 (j). The “No Change Affidavit” found in Attachment 12 and the PNW with instructions is found in Attachment 6.

We require DBEs to submit with this affidavit documentation of the firm’s size, age, and gross receipts.

We will notify all currently certified DBE firms of these obligations by letter no later than 30 days prior to the end of their anniversary date of certification. This notification will inform DBEs to submit the “no change” affidavit, and that their owners must swear or affirm that they meet all regulatory requirements of 49 CFR Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet 49 CFR Part 26 eligibility requirement (e.g., personal net worth, exceeding the gross receipts) the obligation to submit a notice of change applies.

Denials of Initial Requests for Certification (§26.86)

If we deny a firm’s application or decertify it, it may not apply until 6 months have passed from our final action.

Removal of a DBE’s Eligibility (§26.87)

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with §26.87. Attachment 13 to this program sets forth these procedures in detail.

To ensure separation of functions in a decertification, we have determined that the DBE Review Committee will serve as the decision maker in decertification proceedings. We have established an administrative "firewall" to ensure that the DBE Review Committee will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).

Certification Appeals (§26.89)

Any firm or complainant may appeal the denial of certification to the Appeals Committee within 30 days of receiving the denial letter. The Appeals Committee is made up of several senior members from throughout ALDOT as listed in Attachment 4. This committee is independent of the DBE Review Committee and no member of the Appeals Committee is subordinate to any to any member of the Review Committee.

Any firm or complainant may also appeal directly to US DOT. Such appeals may be sent to:

U S Department of Transportation
Office of Civil Rights
External Policy and Program Development Division
1200 New Jersey Avenue SE/W78
Washington, D.C. 20590

Any firm or complainant who does not agree with ALDOT's Appeal Committee decision may still appeal to the US DOT at the address above.

We will promptly implement any US DOT certification appeal decisions affecting the eligibility of DBEs for our US DOT-assisted contracting (e.g. certify a firm if US DOT has determined that our denial of its application was erroneous).

Confidentiality (§26.109)

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any provision of Federal or State laws ALDOT will not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, ALDOT must transmit this

information to the US DOT in any certification appeal proceeding under §26.89 in which the disadvantaged status of the individual is in question.

Attachments

Attachment # 1	Policy Statement
Attachment # 2	49 CFR Part 26
Attachment #3	Bidders List of Quoters (Form HR-DBE)
Attachment # 4	Organization Chart and Key Personnel
Attachment #5	DBE Financial Institutions
Attachment #6	Certification Procedures and Forms
Attachment #7	DBE Contract Special Provisions
Attachment # 8	Form DBE 10 and Instructions
Attachment # 9	Annual Goal Setting
Attachment #10	Utilization Plan (Form OE-110)
Attachment # 11	UCP (When approved)
Attachment #12	Annual Documents Needed to Maintain Certification
Attachment # 13	Decertification Procedures
Attachment #14	Mentor Protégé Program

Attachment 1
Policy Statement

ALDOT DBE Policy Statement

It is the policy of the Alabama Department of Transportation to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in US DOT assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of US DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for US DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in US DOT assisted contracts; and
6. To assist the development of firms that can compete, successfully in the market place outside the DBE Program.

Mr. Ron J. Green has been delegated as the DBE Liaison Officer. In that capacity, he is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Alabama Department of Transportation in its financial assistance agreements with the U. S. Department of Transportation.

The Alabama Department of Transportation has disseminated this policy statement to all components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on US DOT-assisted contracts through our established mailing list of contractors, contractor organizations, consultants, and suppliers.

Transportation Director

Date

Attachment 2
49 CFR Part 26

**PART 26—PARTICIPATION BY DIS-
ADVANTAGED BUSINESS ENTER-
PRISES IN DEPARTMENT OF
TRANSPORTATION FINANCIAL
ASSISTANCE PROGRAMS**

Subpart A—General

Sec.

- 26.1 What are the objectives of this part?
- 26.3 To whom does this part apply?
- 26.5 What do the terms used in this part mean?
- 26.7 What discriminatory actions are forbidden?
- 26.9 How does the Department issue guidance and interpretations under this part?
- 26.11 What records do recipients keep and report?
- 26.13 What assurances must recipients and contractors make?
- 26.15 How can recipients apply for exemptions or waivers?

**Subpart B—Administrative Requirements
for DBE Programs for Federally-Assisted
Contracting**

- 26.21 Who must have a DBE program?
- 26.23 What is the requirement for a policy statement?
- 26.25 What is the requirement for a liaison officer?
- 26.27 What efforts must recipients make concerning DBE financial institutions?
- 26.29 What prompt payment mechanisms must recipients have?
- 26.31 What requirements pertain to the DBE directory?
- 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

**Subpart C—Goals, Good Faith Efforts, and
Counting**

- 26.41 What is the role of the statutory 10 percent goal in this program?
- 26.43 Can recipients use set-asides or quotas as part of this program?
- 26.45 How do recipients set overall goals?

§ 26.1

- 26.47 Can recipients be penalized for failing to meet overall goals?
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APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

AUTHORITY: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914,

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or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktila Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof

of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or sub-contract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawai-

ians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or

Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003]

§ 26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of

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a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

§ 26.11 What records do recipients keep and report?

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

- (i) Firm name;
- (ii) Firm address;

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(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the

prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rule-making that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with

the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation.

You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within

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30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and

other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully

in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set

forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68961, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, will-

ing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see § 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could

be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 66 FR 35553, June 16, 2003]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in non-compliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base

amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider

its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award sub-contracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic

means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination,

you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you

do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information re-

quired by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals,

as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offers for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of

the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the

DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily al-

lowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of

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proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

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(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economi-

cally disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information

to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvan-

tagged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

- (1) The owner's expertise must be—
 - (i) In a specialized field;
 - (ii) Of outstanding quality;
 - (iii) In areas critical to the firm's operations;
 - (iv) Indispensable to the firm's potential success;
 - (v) Specific to the type of work the firm performs; and
 - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no

term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward

ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

* (1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with

non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

* (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning

the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(1) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual

was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement

or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the

firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in

turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it

meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 18, 2003]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and non-discrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all

firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of § 26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer

oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly,

or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* § 26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining

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to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to

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be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit

authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be

deemed a failure to cooperate under § 26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provi-

sions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in ef-

fect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false,

fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This

includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified,

assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types

of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or

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associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organi-

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zations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(H) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS														
Please refer to the instructions sheet for directions on filling out this form														
1. Submitted to (check only one):		<input type="checkbox"/> FHWA		<input type="checkbox"/> FAA		<input type="checkbox"/> FTA-Vendor Number								
2. AIP Numbers (FAA Recipients Only):														
3. Federal fiscal year in which reporting period falls:		FY		4. Date This Report Submitted:										
5. Reporting Period		<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)		<input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)										
6. Name of Recipient:														
7. Annual DBE Goal(s):		Race Conscious Goal _____ % Race Neutral Goal _____ % OVERALL Goal _____ %												
		A	B	C	D	E	F	G	H	I				
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs				
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)														
8. Prime contracts awarded this period														
9. Subcontracts awarded/committed this period														
TOTAL														
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD BREAKDOWN BY ETHNICITY & GENDER		A	B	C	D	E	F	G	H	I				
		Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS				
10. Total Number of Contracts (Prime and Sub)														
11. Total Dollar Value														
ACTUAL PAYMENT/ON CONTRACTS COMPLETED THIS REPORTING PERIOD		A	B	C		D		E						
		Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)		Total DBE Participation (Dollars)		Percentage of Total DBE Participation						
12. Race Conscious														
13. Race Neutral														
14. Totals														
15. Submitted by (Print Name of Authorized Representative)		16. Signature of Authorized Representative												
17. Phone Number		18. Fax Number												

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE

program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to

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a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent

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with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices — not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;

- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;

- (c) Your firm has owned any percentage of any other firm; and

- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered
- "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) **Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

- ① **Should I apply?**
 - Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
 - Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
 - Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
 - Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.
- ② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.
- ③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**
- ④ **Where can I find more information?**
 - U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
 - SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tableofsize.html> (provides a listing of NAICS codes)
 - 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ____ / ____ / ____ State: <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

☐ Yes, on ____ / ____ / ____ ☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:	(5) Fax #:			
(6) E-mail:		(7) Website (if have one):			
(8) Street address of firm (No P.O. Box):		City:	County/Parish:	State:	Zip:
(9) Mailing address of firm (if different):		City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ____ / ____ / ____		(4) I/We have owned this firm since: ____ / ____ / ____	
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):		
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe:		
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain:		
(9) Number of employees: Full-time	Part-time	Total
(10) Specify the gross receipts of the firm for the last 3 years: Year _____	Year _____	Total receipts \$ _____
Year _____	Year _____	Total receipts \$ _____
Year _____	Year _____	Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____	
(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No	
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):	
<u>Name</u>	<u>Address</u> <u>Type of Business</u>
1.	
2.	
3.	

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
If Yes, then list (attach extra sheets, if needed):				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: Function/Title:			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: Function/Title: Nature of Business Relationship:			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify:		(a) Binder No: _____
(b) Name of agent/broker: _____		(c) Phone No: () _____
(d) Address of agent/broker: _____		City: _____ State: _____ Zip: _____
(e) Bonding limit: Aggregate limit \$ _____		Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

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J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.
--

All Applicants

- ☐ Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- ☐ Documented proof of ownership of the company
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Title(s) and registration certificate(s) for each truck owned or operated by your firm
- ☐ List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- ☐ Proof of warehouse ownership or lease
- ☐ List of product lines carried
- ☐ List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian-Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

Attachment 3

Bidders List of Quoters (Form HR-DBE)

Letting Date: _____

Each time Form HR-DBE is submitted to the Department, the Bidder shall list the quoters for the project, using additional sheets if necessary. The listing shall include EACH quoter's name, business location, telephone number and whether or not the quoter is an Alabama certified DBE. **FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RENDER THE BID NON-RESPONSIVE AND THE BID MAY BE REJECTED.**

Providing the listing of quotes in compliance with these provisions shall not be a substitute for the requirements of Subcontractors Fair Practices Act, Chapter 18, Laws of 1988, Sections 13-4-31 through 13-4-43.

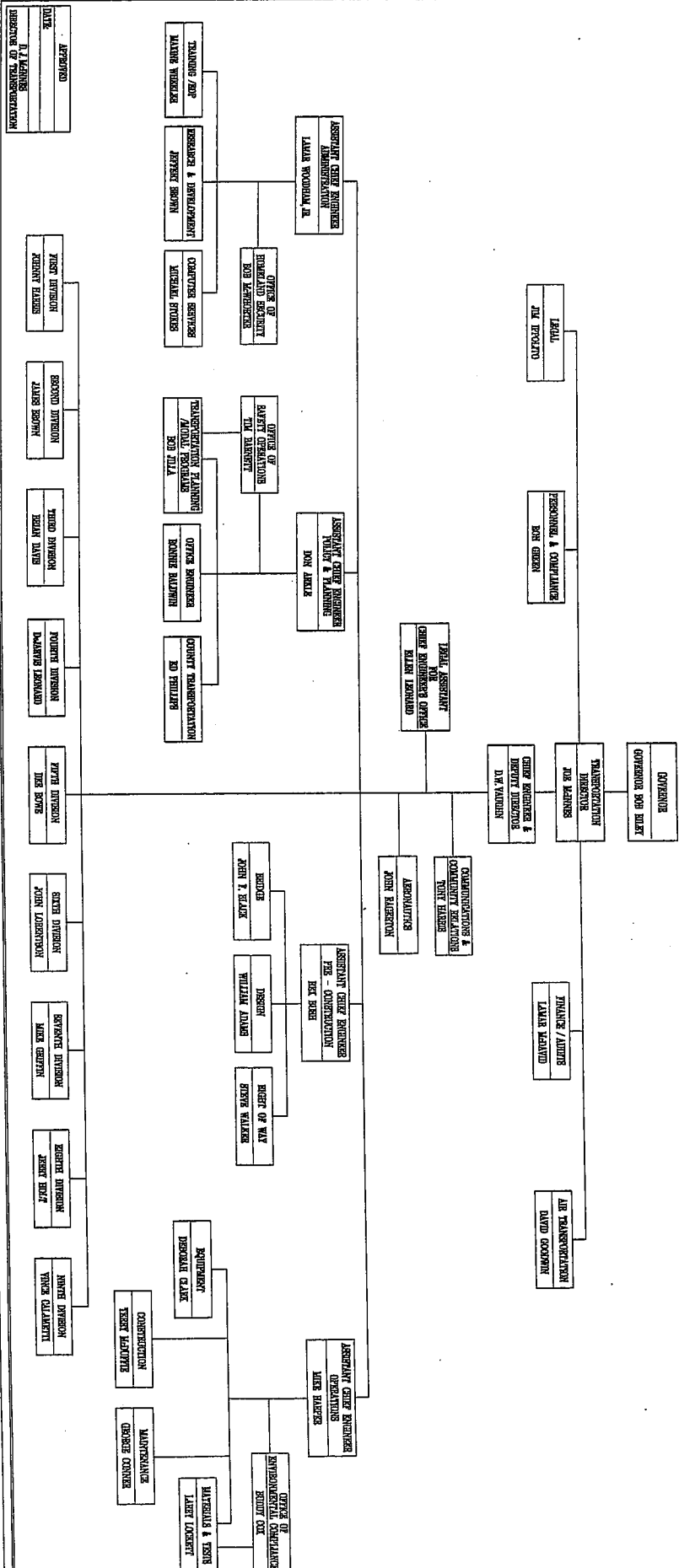
BIDDERS NAME: _____ PROJECT NUMBER: _____ COUNTY: _____

[illegible]

Attachment 4

Organization Chart and Key Personnel

OCTOBER 1, 2009



Mr. Ron Green, Personnel & Compliance Bureau Chief, serves as the DBELO. Mr. Green has direct communication with the Director for DBE issues.

DBE Liaison Officer (DBELO) (§26.25)

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that ALDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Transportation Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 4 to this program.

The DBELO is responsible for developing, implementing, monitoring and supervision of the DBE program, in coordination with other appropriate officials.

Specific duties of the DBELO include but are not limited to:

1. Gather and report statistical data and other information as required by US DOT.
2. Gathers data to set ALDOT annual DBE Goal.
3. Ensures that bid notices and proposals are made available to DBEs in a timely manner.
4. Analyzes ALDOT's progress toward goal attainment and identifies ways to improve progress if applicable.
5. Makes available through the various Supportive Services Providers, assistance in Preparing bids, obtaining bonding and insurance.

Other personnel and their DBE program responsibilities are as follows:

John Huffman, DBE Unit Supervisor

Zakiya Wright, DBE Program Specialist

Shirley McCurley EEO, 1st Division, Guntersville

Randall Roe, DBE 1st Division, Guntersville

Angela Dunstan EEO, 2nd Division, Tuscumbia

Byron Browning EEO, 3rd Division, Birmingham

LaTanga Kennedy-Fore EEO, 4th Division, Alexander City

Kim Patterson DBE, 5th Division, Tuscaloosa

Undrea Hayes EEO, 6th Division, Montgomery

James Duncan DBE, 7th Division, Troy

Shelia Ford EEO, 8th Division, Grove Hill

Leon Malone EEO, 9th Division, Mobile

Ronald Baldwin, Office Engineer Bureau (Contract Documents)

Terry McDuffie, Construction Bureau (Contract Administration)

The DBE Review Committee and the DBE Appeals Committee are made up of senior ALDOT personnel from various areas of ALDOT, such as Construction, Maintenance, Finance, Computer Services, Personnel and the field Divisions. These personnel are appointed by the Director based on individual qualifications and expertise. The appointments are made periodically as a part of the ALDOT committee structure. The appointments are made ensuring that no member of the Appeals Committee is supervised by any member of the Review Committee.

ALDOT Office Engineer Bureau
1409 Coliseum Blvd. Montgomery, AL (334) 242-6450

ALDOT Construction Bureau
1409 Coliseum Blvd. Montgomery, AL (334) 242-6208

ALDOT Personnel/Compliance Bureau
1409 Coliseum Blvd. Montgomery, AL (334) 242-6329

1st Division 23445 US Highway 431 North
Guntersville, AL 35976
(256) 582-2254

2nd Division 295 Highway 20 East
Tuscumbia, AL 35674
(256) 389-1400

3rd Division 1020 Bankhead Highway
Birmingham, AL 35202
(205) 581-5600

4th Division Highway 280
Alexander City, AL 35011
(256) 234-4265

5th Division 2715 Skyland Boulevard
Tuscaloosa, AL 36407
(205) 553-7030

6th Division 1525 Coliseum Boulevard
Montgomery, AL 36110
(334) 269-2311

7th Division Highway 87 South
Troy, AL 36801
(334) 566-4830

8th Division 129 Grove Hill Avenue East
Grove Hill, AL 36451
(251) 275-4103

9th Division 1701 North Beltline Highway
Mobile, AL 36618
(251) 470-8200

Supportive Services Providers

Alabama State University
Minority Business Resource Center
600 South Court Street
Montgomery, AL 36104
(334) 229-4274

Stillman College
DBE Supportive Services Program
P O Box 1430
Tuscaloosa, AL 35403
(205) 247-8102

Alabama A & M University
DBE Supportive Services
School of Business
P O Box 429
Normal, AL 35762
(256) 372-5685

Tuskegee University
DBE Supportive Services
College of Business, Management and Organization
1103 Old Montgomery Road
Tuskegee, AL 36088
(334) 727-3527

UAB
DBE Supportive Services CH 401
1530 3rd Avenue South
Birmingham, AL 35294

Attachment 5
DBE Financial Institutions

DBE Financial Institutions

Citizens trust Bank Alabama

(Formerly Citizens Federal Savings Bank)

1700 third Avenue North

Birmingham, AL 35203

(205) 328-2041

Commonwealth National Bank

2214 St. Stephens Road

Mobile, AL 36617

(251) 476-5938

Gulf Federal Bank

901 Springhill Avenue

Mobile, AL 36604

(251) 433-2671

Attachment 6
Certification Procedures and Forms

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

⌘ Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$20.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

⌘ Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

⌘ Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.

⌘ Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation.
- (3) Indicate the primary phone number of your firm.
- (4) Indicate a secondary phone number, if any.
- (5) Indicate your firm's fax number, if any.
- (6) Indicate your firm's or your contact person's email address.
- (7) Indicate your firm's website address, if any.
- (8) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages. *Please use the brief description names on Page 4 to complete this box. A complete description of the business profiles are listed on Pages 5 - 8.*
- (2) Give the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) Give the date on which your firm was officially established, as stated in your firm's Articles of Incorporation.
- (4) Give the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and parttime basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) your firm has been a subsidiary of any other firm;

- (b) your firm consisted of a partnership in which one or more of the partners are other firms;

- (c) your firm has owned any percentage of any other firm; and

- (d) your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage

another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (a) **NOTE: If your company was initially capitalized using funds from a joint account, or as community property by both spouses. The Non-Socially and Economically Disadvantaged spouse is required to submit a notarized letter which renounces and transfers all rights in ownership interest sanctioned by the state in which either the spouse or the firm is located.**
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

(6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's title or function held in that business.

(7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;

- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such

functions.

E. Financial Information

(1) Banking Information

- (a) State the name of your firm's bank.
 - (b) Give the main phone number of your firm's bank branch.
 - (c) Give the address of your firm's bank branch.
- (2) Bonding Information**
- (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) Give your agent's/broker's phone number.
 - (d) Give your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. List the three largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DBE Work Types/Categories

GLOSSARY

Highway Construction

(normal ALDOT work)

Barrier Rail	Fencing	Retaining Wall
Base	Guardrail	Sediment/Erosion Control
Bridge Coating	Hazardous Materials	Stay-in-Place Forms
Bridge Construction	Land Clearing	Striping
Concrete Specialty	Landscaping	Traffic Control
Culvert Construction	Lighting/Signal	Trucking
Curb & Gutter	Minor Structure Concrete	Tunnel Work
Demolition	Paving	Utility Construction
Drilling/Blasting	Pest Control	Vegetation Establishment
Edge Drain	Pile Driving	Welding/Iron Work
Engineering Control	Prime Contractor	
Excavation	Reinforcing Steel	

Other Construction

(non-highway, i.e. traditional construction of buildings)

Building/Framing	Glass	Painting
Electrical	Heating & A/C	Plumbing
Flooring	Masonry	Roofing

Materials

Dealer/Supplier	Manufacturer
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Services

Bonding	Insurance	Towing
Consulting	Real Estate	
Financial	Software Development	

DBE Work Types/Categories

GLOSSARY

Note: a cited section such as (Section 510) is a reference to the applicable Section of the *ALDOT Standard Specifications for Highway Construction*, which describes the requirements for the work of this type/category.

Highway Construction (normal ALDOT work)

Barrier Rail – work type includes bridge barrier rail construction (Section 510), median or safety barrier rail construction/installation (Section 629) or portable safety rail installation (Section 726).

Base – work type includes Roadbed Processing items (Section 230), Roadbed Stabilization (Section 231), Lime Stabilization (Section 232), and various Base Course items (Section 301).

Boring/Trenching – work types includes horizontal boring and trenching operations for installation of cables, conduits, splices, and fiber optic lines and systems for traffic signals (Section 730), roadway lighting items (Section 750), Dynamic Message Signs (Section 737), Video Systems (Section 739), and Overhead Sign Structures (Sections 714-717). It also includes boring and trenching work for water line, sewer line, and other utilities and encasements as outlined in Sections 640-649.

Bridge Coating – see Section 521.

Bridge Construction – work type includes typical bridge construction such as foundations (piling or drilled shafts), structural steel installation, substructure concrete, and superstructure concrete. Ability to perform this work includes installing the required reinforcing steel.

Concrete Specialty – work type includes breaking, cleaning, coring, crosshole sonic logging, grinding, grooving, grouting, joint sealing, rubblizing, sawcutting, seating, undersealing, and waterproofing.

Culvert Construction – work type includes culvert construction, culvert extensions, and bridge culvert construction (Section 524). Ability to perform this work includes installing the required reinforcing steel.

Curb & Gutter – work type includes typical curb, gutter, and curb & gutter items (Section 623). This work type generally is for work requiring a curb machine. Small quantity construction typically done by hand with standard formwork would be considered minor structure concrete.

Demolition – work type includes typical demolition work such as removal of structures, old bridges, culverts and large buildings/structures.

Drilling/Blasting – work type includes specialty type work for drilling and/or blasting for items such as excavation of rock. This includes vertical drilling and boring.

Edge Drain – work type includes Pavement Edge Drain items (Section 605) and the applicable outlet items.

Engineering Control – see Section 680.

Excavation – work type includes normal grading items (Section 210-212, 214), Limesink Remediation items (Section 224), Aggregate Surfacing (Section 430), Roadway Pipe (Section 530), Slotted Drain Pipe (Section 532), Storm Sewer Pipe (533), Side Drain Pipe (Section 535) Underdrain Pipe items (Section 606), and Riprap (Section 610).

Fencing – see Sections 634-637.

Guardrail – work type includes various guardrail, end anchors and glare screens in Sections 630-632 and Permanent Barricades in Section 713.

Hazardous Materials – work type includes asbestos abatement, UST removals, contaminated soil treatment/removal, etc. Contractor must have all current and valid accreditations, permits, licenses, and certifications required for this work.

Land Clearing – work type includes ability to perform Clearing & Grubbing (Section 201) and removal of small structures (Section 206).

Landscaping – work type includes ornamental plant items such as vines, shrubs, and trees (Section 660). Contractor must possess a current and valid professional services permit for the Setting of Landscape Plants issued through the Alabama Department of Agriculture and Industries. In addition, contractor must have a current and valid Commercial Application Permit (turf and ornamentals category) for herbicide applications.

Lighting/Signal – work type includes typical traffic signal installation items (Section 730) and lighting items (Section 750) as well as the affected electrical systems, cables, conduits, splices, and fiber optic lines and systems. It can also include Dynamic Message Signs (Section 737), Video Systems (Section 739), and Overhead Sign Structures (Sections 714-717).

Minor Structure Concrete – work type includes typical concrete construction for slope paving, driveways, sidewalks, pipe end treatments, collars, plugs, junction boxes, inlets, manholes, and stilling basins (Sections 614, 618-622). It also includes curb and gutter work using standard forms.

Paving – work type includes hot mix asphalt production and/or placement, bituminous treatment operations, and/or removal of existing asphalt. Applicable items include Section 327, 401, 404, 405, 408, 410, 420, 423, 424, 428 and 429. Work type also includes construction of concrete pavement as outlined in Section 450.

Pest Control – see Section 666. Contractor must have a current and valid Commercial Application Permit specifically for right-of-way pest control.

File Driving – includes cofferdams and various piling items for bridge foundations; see Sections 503 and 505.

Prime Contractor – work type is for contractors who are pre-qualified and bid with ALDOT as a prime contractor and have the ability to perform multiple operations such as clearing, excavation, and base work or bridge construction, culvert construction, minor structure concrete, etc. without the use of subcontractors. Contractors that meet this criterion will have this work type listed along with each specific work type they are certified to perform.

Reinforcing Steel – work type is only for contractors who perform partial work such as tying rebar for installation in large concrete structures such as a culverts, bridge substructures, and decks.

Retaining Wall – work type is for typical wall construction as covered by Section 529.

Sediment/Erosion Control – work type includes Rolled Erosion Control Products (Section 659); typical Section 665 sediment control items such as temporary pipe, polyethylene, hay bales, sand bags, check dams, temporary aggregates, silt fence, wattles, silt dikes, inlet protection, floating basin booms; and Flocculant (Section 672).

Stay-in-place forms – work type includes partial work for installing metal deck forms as part of a bridge superstructure construction (Section 510).

Striping – see Sections 701, 703 and 705 for typical roadway markings.

Traffic Control – work type includes furnishing, installation and possible maintenance of permanent and temporary traffic control items as outlined in Sections 707-711 and 740-742 and Permanent Barricades (Section 713).

Trucking – transportation of construction materials from off-site to the project site, within the project limits, and from the project site to an off-site location.

Trucking-Tanker – work types includes hauling liquid products such as asphalt cement and construction fuel in tanker trucks.

Tunnel work – see Sections 783-788.

Utility Construction – work type includes the installation of water line, sewer line, and other utilities and encasements as outlined in Sections 640-649.

Vegetation Establishment – work type includes Seeding and Mowing items (Section 652), Solid Sodding (Section 654), Mulching (Section 656), Rolled Erosion Control Products (Section 659), and Temporary Seeding and Mulching (Section 665). It may also include Flocculant (Section 672).

Welding/Iron work – this work type is only for contractors who only specialize in this type of work, which is generally performed on items such as pile splices and cofferdam construction. Note: most bridge contractors will have employees who can perform these duties without the use of a subcontractor.

Other Construction (non-highway, i.e. traditional construction of buildings)

Building/Framing – work type includes construction of commercial buildings, houses, foundations.

Electrical – work type includes wiring and conduit for commercial, industrial and residential buildings

Flooring – work type includes carpet, hardwood floors, laminate, tile, vinyl, etc.

Glass – work type includes installation of windows, mirrors, glass doors, etc.

Heating & AC – self-explanatory

Masonry – work type includes brick, block, stone, and stucco installation.

Painting – work type includes traditional exterior and interior wall and trim painting for commercial buildings and residences.

Plumbing – self-explanatory

Roofing – self-explanatory

Materials

Dealer/Supplier – work type was renamed to coincide with 49CFR wording. Materials that are furnished by a certified DBE Dealer are subject to 60% credit of the invoice price. See Credit Toward Participation section of the DBE Special Provision.

Manufacturer - Materials that are furnished by a certified DBE Manufacturer are subject to 100% credit of the invoice price. See Credit Toward Participation section of the DBE Special Provision.

Services

Bonding – self-explanatory

Consulting – normal engineering and professional services type firms.

Financial – work type includes banking firms, financial planners, accountants, etc.

Insurance – work type is for business equipment, personnel and liability purposes.

Real Estate – self-explanatory

Software Development – work type is for a specific professional service.

Towing – Work type can include the mobilization and de-mobilization of equipment to projects.

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? (If Yes, check appropriate box(es))	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ___/___/___ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
<input type="checkbox"/> SDB		

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

☐ Yes, on ___/___/___ ☐ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION**A. Contact Information**

(1) Contact person and Title:		(2) Legal name of firm:	
(3) Phone #:	(4) Other Phone #:	(5) Fax #:	
(6) E-mail:		(7) Website (if have one):	
(8) Street address of firm (No P.O. Box):	City:	County/Parish:	State: Zip:
(9) Mailing address of firm (if different):	City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):
(3) This firm was established on ___/___/___		(4) I/We have owned this firm since: ___/___/___
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain) _____		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply):

☐ Sole Proprietorship

☐ Partnership

☐ Corporation

☐ Limited Liability Partnership

☐ Limited Liability Corporation

☐ Joint Venture

☐ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

☐ Yes ☐ No

If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?

☐ Yes ☐ No

If Yes, identify: Other Firm's name: _____

Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No

If Yes, then list (attach extra sheets, if needed):

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply): <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm: <table style="width: 100%; border: none;"> <tr> <td style="text-align: right;">Type</td> <td style="text-align: right;">Dollar Value</td> </tr> <tr> <td style="text-align: right;">Cash</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: right;">Real Estate</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: right;">Equipment</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: right;">Other</td> <td style="text-align: right;">\$</td> </tr> </table>	Type	Dollar Value	Cash	\$	Real Estate	\$	Equipment	\$	Other	\$
Type		Dollar Value									
Cash		\$									
Real Estate	\$										
Equipment	\$										
Other	\$										
(3) Percentage owned:											
(4) Familial relationship to other owners:											
(5) Shares of Stock: <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>Number</u></td> <td style="text-align: center;"><u>Percentage</u></td> <td style="text-align: center;"><u>Class</u></td> <td style="text-align: center;"><u>Date acquired</u></td> <td style="text-align: center;"><u>Method Acquired</u></td> </tr> </table>		<u>Number</u>	<u>Percentage</u>	<u>Class</u>	<u>Date acquired</u>	<u>Method Acquired</u>					
<u>Number</u>	<u>Percentage</u>	<u>Class</u>	<u>Date acquired</u>	<u>Method Acquired</u>							
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____											
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____											

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify for each: Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any

other business? π Yes π No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
 π Yes π No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? π Yes π No

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime	Location of	Type of Work	Project	Anticipated	Dollar
---------------	-------------	--------------	---------	-------------	--------

Contractor and Project Number	Project		Start Date	Completion Date	Value of Contract
1.					
2.					
3.					

Uniform On-Site Inspection and Owner Interview Report State of Alabama

Purpose

The purpose of this on-site inspection is to solicit information from the owner(s) record of the below named company to determine if his/her ownership and control is real, substantial, and continuing and is consistent with the day to day control requirement contained in the governing federal regulations of 49CFR, Part26.

General Information

Review Conducted By:

Location:

Date:

Start Time:

Time Completed:

Name of Firm:

Mailing Address:

Physical Address:

How Long At Present Location:

Telephone No.:

Contact Person:

Type of Company

☐ Corporation

☐ Partnership

☐ Joint Venture

☐ LLC

☐ Sole Proprietorship

☐ Other (Specify)

ALDOT Representative: _____

Applicant Representative: _____

Attachment 7

DBE Contract Special Provisions

110.07

(t) If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

(u) All documents which reflect the Contractor's actual profit and overhead during the years this Project was being performed and for each of the five years prior to the commencement of this Project.

(v) All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.

(w) All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim.

(x) Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

SECTION 111 DISADVANTAGED BUSINESS ENTERPRISE (DBE)

111.01 Goals.

This contract contains a specific goal for the participation of certified DBEs. The goal is expressed as the percentage of the total amount of the contract that is required for DBE participation and is given in the proposal. This type of participation is defined as Race Conscious.

If no specific percentage is indicated in the proposal, then any DBE firm utilized for work in this contract is defined as Race Neutral. The requirements listed in Article 111.08 and 111.09 still apply to contracts with no specific goal. In addition, any participation by DBEs above the required goal is also defined as Race Neutral.

111.02 Certification.

The Department maintains a current listing of certified DBE firms by categories of work. The Department's certification extends only to the requirements of 49 CFR 26 with regard to business size, disadvantaged status, and ownership and control of business. The certification does not attest in any way to the capabilities or capacity of any business to perform satisfactorily.

DBE firms that are not on the current certification list must seek approval prior to tendering an offer on any project.

111.03 Low Bidder Submittal DBE Utilization Plan.

This contract will be awarded to the lowest responsible bidder. The apparent low bidder will be notified by the Department and, within ten calendar days, must submit the following information in writing on Form OE-110 (DBE Utilization Plan) provided by the Department:

- the name and address of the DBE firm or firms;
- the description of the work to be subcontracted;
- the dollar amount of the work;
- a written commitment from the bidder to use the DBE;
- a written confirmation from the DBE that it is participating in the contract as provided in the commitment.

111.04 Failure by Low Bidder to Meet DBE Goal.

In the event the apparent low bidder cannot meet the DBE goal, the low bidder must provide documentation that good faith efforts were made to meet the goal.

111.05 Good Faith Efforts by Low Bidder.

(a) SOLICITATION OF DBE PARTICIPATION.

A good faith effort is soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising, written notices, corresponding with the ALDOT's DBE Program Coordinator, placing postings on the Small Business Network of Bid Express) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(b) SELECTING PORTIONS OF THE CONTRACT WORK TO FACILITATE DBE PARTICIPATION.

A good faith effort is selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise prefer to perform these work items with its own forces.

(c) PROVIDING INFORMATION ABOUT CONTRACT REQUIREMENTS.

A good faith effort is providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(d) NEGOTIATING IN GOOD FAITH.

A good faith effort is negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(e) INVESTIGATING THE CAPABILITIES OF A DBE TO PERFORM THE WORK.

A good faith effort is establishing sound reasons (based on a thorough investigation of the capabilities of a DBE to perform the work) for rejecting a DBE as being unqualified. The bidder's standing within its industry, and membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the bidder's efforts to meet the project goal.

(f) PROVIDING ASSISTANCE IN OBTAINING BONDING, CREDIT AND INSURANCE.

A good faith effort is providing assistance to interested DBEs in obtaining bonding, lines of credit, or insurance as required by the DBE or bidder.

(g) PROVIDING ASSISTANCE IN OBTAINING EQUIPMENT, SUPPLIES AND MATERIALS.

A good faith effort is providing assistance to interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(h) UTILIZING INDUSTRY, GOVERNMENTAL AND SERVICE GROUPS.

A good faith effort is effectively using the services of available minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

111.06 Evaluation of Low Bidder's Good Faith Efforts.

The Department has established a "Good Faith Efforts Committee".

If the Good Faith Efforts Committee determines the information and documentation from the bidder are satisfactory, the bid will be declared responsible. Acceptable good faith efforts may include activities in addition to those that are described in Article 111.05 and 49 CFR Part 26 Appendix A. A low bidder's good faith efforts on other ALDOT construction contracts may be considered in determining the acceptability of the low bidder's good faith efforts to meet current participation goals.

If the information and documentation are unsatisfactory, the bidder will be notified in writing within five days. The bidder will be given the opportunity to appear before the Department's Transportation Director to present additional evidence of good faith efforts. The bidder will then be given a written decision on the outcome of the consideration of this evidence.

Failure to meet the contract goal or demonstrate good faith efforts will result in the bid being declared to be in default and the bid bond shall be forfeited.

111.07 DBE Termination After Award of the Contract.**(a) NOTIFICATION OF TERMINATION.**

A prime contractor cannot terminate a DBE subcontractor listed on the DBE Utilization Plan for convenience and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without the Department's prior written consent. If a listed DBE subcontractor fails to perform, or performs unsatisfactorily, the prime contractor will notify the Project Engineer in writing, with a copy to the State Construction Engineer, stating the reasons for termination with supporting documentation.

(b) SUBSTITUTION OF NEW DBE FOR TERMINATED DBE.

If the reasons for termination are satisfactory, the prime contractor will be required to obtain a substitute DBE and submit a revised DBE Utilization Plan, or demonstrate good faith efforts as described in Articles 111.05 and 111.06 in trying to obtain a substitute DBE. If the prime contractor fails or refuses to comply, the Department reserves the right to issue a warning letter as defined in the DBE Violations (Article 111.09) and/or an order stopping all or part of the payment and work until satisfactory action has been taken.

111.08 Credit for Work Assigned to Meet the DBE Goal.**(a) VALUE OF WORK PERFORMED BY A DBE.****1. WORK DONE DIRECTLY BY DBE FORCES.**

The dollar amount of that portion of a construction contract that is performed by the DBE's own forces will be counted towards meeting the DBE goal. This dollar amount shall include the cost of supplies and materials obtained by the DBE for the work of the contract, including equipment leased by the DBE. This dollar amount shall not include supplies, materials, and equipment the DBE purchases or leases from the prime contractor or affiliates of the prime contractor. (The term "affiliates" is defined in Subarticle 102.02(a)).

2. FEES AND COMMISSIONS CHARGED BY A DBE.

The dollar amount of fees or commissions charged by a DBE firm for providing a service, such as professional, technical, consultant, or managerial service, or for providing bonds or insurance specifically required for the performance of the contract will be counted towards meeting the DBE goal. The fee shall be reasonable and not excessive as compared with fees customarily paid for similar services.

3. DBE OBTAINING A SUBCONTRACT WITH LOWER TIER SUBCONTRACTOR.

When a DBE subcontracts part of the work of its subcontract to another firm, the value of this work will be counted toward the DBE goal if the DBE's subcontractor is a DBE.

Work that a DBE subcontracts to a non-DBE firm will not be counted toward the DBE goal.

(b) JOINT VENTURE.

When a DBE performs as a participant in a joint venture, the dollar amount of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will be counted toward DBE goal.

(c) COMMERCIALY USEFUL FUNCTION.**1. REQUIREMENT FOR A COMMERCIALY USEFUL FUNCTION.**

The dollar amount of contract work performed by a DBE will only count towards meeting the DBE goal if the DBE performs a "commercially useful function".

2. DEFINITION OF A COMMERCIALY USEFUL FUNCTION.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The determination of whether or not a DBE is performing a commercially useful function will be based on the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.

3. EXTRA PARTICIPATION (NOT A COMMERCIALLY USEFUL FUNCTION).

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The determination of whether or not a DBE is an extra participant will be based on similar transactions, particularly those in which DBEs do not participate.

4. INSUFFICIENT PARTICIPATION (NOT A COMMERCIALLY USEFUL FUNCTION).

If a DBE does not perform or exercise responsibility for at least 30 % of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the DBE is not performing a commercially useful function.

5. CONSIDERATION OF TRUCKING AS A COMMERCIALLY USEFUL FUNCTION.

The following factors will be given consideration in determining whether or not a DBE trucking company is performing a commercially useful function:

a. Responsibility for Management and Supervision of Trucking.

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

b. Truck Ownership and Operation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

c. Credit for Transportation Services.

The DBE will receive credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

d. Leasing from DBE Firm.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE will receive credit for the total value of the transportation services the lessee DBE provides on the contract.

e. Leasing from Non-DBE Firm.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

f. Exclusive Use of Truck During Lease.

To receive credit for trucking, it must be clearly shown on a lease that the DBE has exclusive use of, and control over the truck. This does not preclude the leased truck from being used for work for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

g. Lease Agreement Documentation

A copy of each lease agreement, both for DBE firms and non-DBE firms, must be submitted with the DBE Utilization Plan if the DBE Trucking company intends on utilizing a this type of trucking participation or with the first Form DBE-10 submittal after the lease agreement is executed and utilized on the contract.

6. CONSIDERATION OF APPEAL BY DBE THAT WORK IS A COMMERCIALLY USEFUL FUNCTION.

When it is determined that a DBE is not performing a commercially useful function the prime contractor and the DBE will be given the opportunity to provide documentation to rebut this determination.

The Department's decisions concerning commercially useful functions are subject to review by other entities but are not administratively appealable to the USDOT.

(d) MATERIALS AND SUPPLIES COUNTED TOWARD MEETING THE DBE GOAL.

1. DBE MANUFACTURER.

If the materials or supplies are obtained from a DBE manufacturer, 100 % of the cost of the materials or supplies will be counted toward meeting the DBE goal.

A DBE manufacturer shall be defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

2. DBE REGULAR DEALER.

If the materials or supplies are purchased from a DBE regular dealer, 60 % of the cost of the materials or supplies will be counted toward meeting the DBE goal.

A DBE regular dealer shall be defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. In addition, the regular dealer, with the exception of steel, must be certified in accordance with the Department's program for the Materials, Sources and Devices with Special Acceptance Requirements Manual.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers.

3. BROKERS

With respect to materials or supplies purchased from a DBE which is neither a DBE manufacturer nor a DBE regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, will count toward the DBE goal if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

The cost of the materials and supplies will not be counted toward the DBE goal.

(e) CERTIFICATION AT THE TIME OF THE EXECUTION OF THE CONTRACT.

If a firm is not currently certified as a DBE at the time of the execution of the contract, the firm's participation in the contract will not be counted toward the DBE goal.

When a prime contractor has made a commitment to using an ineligible firm (one decertified by the Department) and a subcontract has not been executed before the Department issued the decertification notice, work by the ineligible firm does not count toward the contract goal. The prime contractor must meet the contract DBE goal with an eligible DBE firm or demonstrate that he has made good faith efforts to do so.

If a prime contractor has executed a subcontract with an ineligible firm before the Department issued the decertification notice, the prime contractor may continue to use the firm on the contract and may continue to count the firm's participation toward the contract DBE goal.

(f) PAYMENTS CONSIDERED APPLICABLE TO THE DBE GOAL.

The participation of a DBE subcontractor toward meeting the DBE goal will only be counted toward the goal after the compensation for the work has been paid to the DBE.

(g) REPORTING DBE PERFORMANCE.

1. MONTHLY ESTIMATE REPORT.

To document the DBE participation for the contract, the prime contractor shall furnish the Project Engineer an ALDOT FORM DBE-10 for each estimate period. In the case of contracts with more than one project, a Form DBE-10 shall be submitted for each project estimate. The prime contractor shall provide the required data for each DBE active on the project during the estimate period. If no DBE was active during the time period, such indication should be made on the form.

Form DBE-10 shall be submitted on all Federal aid projects regardless of whether or not the contract contains a specific DBE goal.

The Form DBE-10 shall be submitted within sixty calendar days of the close of the estimate period for which it applies. Failure to furnish the Form DBE-10 in a timely manner may result in the withholding of further monthly estimates until the delinquent information has been submitted.

2. MONTHLY ESTIMATE DOCUMENTATION.

For DBE Manufacturers, Dealers, and Broker (including any fee/commission service work), a copy of the paid invoice shall be submitted with the DBE-10 form work for which the work performed and services provided applies. For DBE Truckers who haul materials from a commercial facility such as a quarry to the plant for stocking purposes for the production of materials for the contract, a copy of each haul ticket shall be provided to the Project Engineer with the DBE-10 form. This documentation is to verify the work performed for this contract.

3. FINAL REPORT.

Prior to the submission of the final estimate voucher for signing, the prime contractor shall furnish a final Form DBE-10 for each DBE subcontractor. This final Form DBE-10 shall be submitted to document any changes in the quantities of work performed by the DBE since the project completion due to the final quantities review and resulting payment adjustments. This form shall be submitted with the information required in Subarticle 109.12(c).

4. CERTIFICATION OF ACTUAL PAYMENTS FORM.

Prior to the submission of the final estimate voucher for signing, the prime contractor shall furnish a Certification of Actual Payments to DBE Firms form for each DBE subcontractor. This form shall be submitted with the signature of an authorized representative of the DBE in order to document the total amount paid to the DBE firm as indicated on the final Form DBE-10. In the event that the DBE firm has gone out of business and is unavailable to sign the form, the prime contractor shall submit copies of the subcontractor estimates and cancelled checks verifying the amount paid to the DBE firm. This form shall be submitted with the information required in Subarticle 109.12(c).

111.09 DBE Violations.

(a) DESCRIPTIONS OF VIOLATIONS.

1. VIOLATIONS BY BIDDERS AND PRIME CONTRACTORS.

Possible violations by bidders and prime contractors include, but are not limited to, failure to meet the contract goal, failure to make good faith efforts, deleting DBE subcontractors for convenience, improper DBE participation credit reports, continued failure to furnish Form DBE-10 reports, failure to comply with Department decisions and directives concerning DBE activities, and fraud.

2. VIOLATIONS BY DBE SUBCONTRACTORS.

Possible violations by DBE subcontractors include those listed in 49 CFR Part 26.107 as well as failure to fulfill contract commitments and negotiations.

3. DETERMINATION OF VIOLATIONS.

These violations are only possible examples and not all inclusive. The Department reserves the right to determine exact violations and the extent of each violation on a case-by-case basis.

(b) VIOLATIONS PRIOR TO AWARD OF THE CONTRACT.

Failure by the apparent low bidder to provide and obtain approval of a DBE Utilization Plan within the time frame specified, or failure of the apparent low bidder to make and document good faith efforts will result in the contract not being awarded to that bidder.

If the contract is awarded to the next low bidder, the original low bidder will be prohibited from doing any work relating to the contract either as subcontractor or in any other capacity.

These restrictions shall apply to any other name under which the same person, individual, partnership, company, firm, corporation, association, cooperative, affiliate, or other legal entity may be operating, and in which the principal owner(s) are involved.

(c) VIOLATIONS WHILE THE CONTRACT IS IN EFFECT.

For the first violation of the DBE requirements, a letter will be written to the prime contractor and/or the DBE, if applicable, citing the violation and warning that failure to rectify the violation or further violations will result in disqualification as outlined in Subarticle 102.02(b).

The second violation will result in the prime contractor and/or the DBE subcontractor being disqualified as outlined in Subarticle 102.02(b) for an indefinite period. The disqualification may be reviewed each six months, if requested in writing by the disqualified firm.

The third violation will result in the prime contractor and/or the DBE subcontractor being disqualified as outlined in Subarticle 102.02(b) for an indefinite period. The disqualification will be for at least one year. It may be reviewed after one year, if requested in writing by the disqualified firm.

111.09

An exception to the above is that an open and flagrant violation. The prime contractor and/or the DBE subcontractor will not be issued a warning letter, and the prime contractor and/or DBE subcontractor will be summarily disqualified as outlined in Subarticle 102.02(b) for at least six months. The disqualification may be reviewed after such time, if requested in writing by the disqualified firm. If applicable, the DBE subcontractor's continued status as a certified DBE will be recommended to the Department's DBE Review Committee for review.

Attachment 8
Form DBE 10 and Instructions

Used January 2007		ALDOT FORM 300-EE-10	
Project Number:		2. County:	3. Division:
Prime Contractor:		5. DBE:	
Date:		7. ALDOT Estimate:	8. Estimate Period: From: To:

Description of Work: (Pay Item No. & Description)		10. Type Firm (C/S/M/BF)	11. Unit Price	12. Units	13. Units Worked	14. Amount Performed this Period	15. Units Performed to Date	16. Amount Performed to Date
Pay Item No.	Item Description							
7. Comments:								19. Total:

7. Comments:

Date Signed

Printed Name & Title

Signature of Authorized Representative:

Alabama Department of Transportation

ALDOT Form DBE 10 Instructions

Block Number Instructions

- 1 ALDOT Project Number
- 2 County
- 3 Division
- 4 Prime Contractor for the Project
- 5 DBE for this Report
- 6 Date of Report
- 7 ALDOT Estimate Number
- 8 Work Period for this Estimate (Beginning Date - Ending Date)
- 9 Description of Work - Must include Pay Item No. and Description (Also denote if Partial such as Hauling, Stocking, Furnish & Tie, S.I.P. Forms, etc.)
- 10 Type of DBE, i.e. Contractor (C), Supplier (S), Manufacturer (M), or Brokerage/Fee (BF) work
- 11 Unit Price of Work
- 12 Units
- 13 Units of Work Accomplished this Period
- 14 Amount Performed for this Period (Block 11 times Block 13)
- 15 Units Performed to Date
- 16 Amount Performed to Date (Block 11 times Block 15)
- 17 Comments Pertinent to this DBE-10
- 18 Total of Amounts in Block 14
- 19 Total of Amounts in Block 16
- 20 Signature of Prime Contractor's Authorized Representative, Printed Name & Title and Date Signed

- Submittals:**
- 1) Invoices are required for all supplier and manufacturer credit.
 - 2) Tickets are required for all "Stocking the Plant" hauling.
 - 3) In lieu of completing the form, the prime contractor may note "See attached" on the form and attach a similar form (i.e. subcontractor estimate) provided it has the same data. If the contractor chooses to do this, he will have to adjust the credit on the actual DBE-10 if the DBE is a supplier.

Attachment 9
Annual Goal Setting



Bob Riley
Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

1409 Coliseum Boulevard
Montgomery, Alabama 36110

Telephone: 334/242-6311 • Fax No.: 334/262-8041



Joe McInnes
Transportation Director

November 30, 2009

Mr. Mark Bartlett, P.E.
Division Administrator
Federal Highway Administration
9500 Wynnlake Place
Montgomery, Alabama 36117

Dear Mr. Bartlett:

In accordance with the U.S. Department of Transportation's Disadvantaged Business Enterprise Program Guidelines, as established in 49 CFR Part 26, the Alabama Department of Transportation is submitting our proposed goal for Fiscal Year 2010.

If further information is needed, please let us know.

Sincerely,

D.J. McInnes
Transportation Director

Alabama Department of Transportation (ALDOT)
DBE PROGRAM GOAL SETTING
Analysis & Methodology for FY 2010

Goal Setting Methodology

Overall Goal

Base Line

In accordance with 49 CFR Part 26.45, the following goal was established. The process used to determine this goal as spelled out in 49 CFR Part 26 is as follows:

Step One:

Baseline: As a result of a review of the Bidders List of Quoters (per 49 CFR Part 26.45(c) (2)), actual sublets to subcontractors, and a review of the Department's pre-qualified contractors bidders list, we were able to establish a list of ready, willing and able DBEs and a list of contracting firms (DBE and Non-DBE) that have contracted to do work (or provided quotes to prime contractors) with ALDOT for the period of January 1, 2004 thru December 31, 2008, the period under review, to compute the base figure to the goal. The Bidders List of Quoters, as provided by the Responsive Bidders for the contracts, is updated after each letting to maintain a current listing. The actual sublets are approved and tracked by the Bureau of Office Engineer. The pre-qualified contractors list is pulled directly from those qualified by ALDOT as being qualified to bid on construction projects and providing a responsive bid during the review period. This list is updated as information is provided by the contractors.

During the period in question, there were 123 certified DBE and 1294 Non-DBE, prime and subcontractors bidding or quoting on federal assisted highway contracts or are pre-qualified to do so. These represent the firms that were ready, willing, and able to compete for USDOT-assisted contracting. The ratio for Step One is as follows:

123

1294 = 9.50% Baseline figure.

Step Two:

The historical utilization record suggests that levels of past participation in general are approximately the number in Step One (9.50%). Past participation DBE data is as follows:

	Overall	Race Conscious	Race Neutral
2004	8.95%	5.08%	3.87%
2005	10.78%	6.18%	4.60%
2006	10.30%	5.20%	5.10%
2007	12.40%	5.95%	6.45%
2008	9.30%	3.50%	5.80%

(As of June 2, 2009)

Therefore, ALDOT determined that it is not necessary to make an adjustment to its base figure. There was no evidence available from related fields that affect the opportunities for DBEs to form, grow, and compete. A disparity study was not conducted.

Race Neutral and Race Conscious Measures

ALDOT determined, based on available reports of actual participation, that 5.10% (the median value of the previous five years data based on participation by subcontractors and prime contractors on contracts without goals or the participation was in excess of the DBE goals. The median figure is also inclusive of DBE consultant participation.) was the race neutral portion of our utilization. This part of the goal was calculated from five years of data ending on December 31, 2008. The following race-neutral means have been instituted and continue to be utilized by ALDOT to increase opportunities for Disadvantage Business Enterprises (DBEs) and small businesses:

- (1) Providing technical assistance and other services,
- (2) Providing training on federal bonding and loan programs,
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities,
- (4) Continuing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses,
- (5) ALDOT publishes its lettings on its web page and provides information on all lettings to the various Supportive Services institutions,
- (6) Posting the ALDOT DBE directory on our Internet Web page where it is updated several times a month,
- (7) Ensuring that printed copies of the ALDOT DBE directory are available upon request. The internet posting has proven to be very popular with our DBE and Prime contractor community, generates calls from the DBEs when their information changes. This helps ensure current contact information for the DBEs. This was not possible with the printed directory,
- (8) ALDOT, in cooperation with Bid Express (an Internet Bidding service currently used

by Alabama and 22 other states), has implemented a Small Business Network service to enable small businesses to more readily ascertain the items in the bid proposals and assist in providing quotes to plan holders. For our certified DBEs, ALDOT is funding the fees (through our Supportive Services Providers) charged to the contractors/subcontractors for the service. We feel that this will provide far reaching opportunities for the DBEs to better participate in the bid process and also and also better enable the prime contractors to advertise for DBE quotes before the letting and equally importantly, during the course of the project as the need arises for new subcontractors.

- (9) ALDOT intends to schedule a training meeting with DBE clientele for upcoming fiscal year. If successful, ALDOT will add inputs from the meeting to its ongoing process.
- (10) ALDOT will evaluate an E-learning class as a training alternative for DBE firms. If Successful, ALDOT will add it to its ongoing process.

Public Participation

In accordance with 49 CFR Part 26.45 (g) (1) (2)

26.45 How do recipients set overall goals?

"(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and nondisadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal place office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority - focused media and trade association publications".

In adherence to the preceding citations, ALDOT provided for public participation and the initiation of consultation procedures by holding a meeting on May 21, 2009. A public participation meeting was held at ALDOT Central Office (Gunter Annex). The department advertised (see attachment 1) this meeting in major papers across the state requesting individuals with DBE certification and others to attend the preceding meeting. The meeting was held from 5:00pm to 7:00pm, and was teleconferenced from the Central Office (Gunter Annex) to designated ALDOT Divisions throughout the state. Individuals attended and participated simultaneously by teleconference at the ALDOT First Division (Huntsville, AL), Third Division (Birmingham, AL), and Ninth Division (Mobile, AL), individuals attending the meetings consisted of firms certified as DBEs with ALDOT, members of the Alabama DBE Contractors Association, Montgomery Transit Authority, and The Alabama State Port Authority. This meeting was open

to minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and our efforts to establish a level playing field for the participation of DBEs. ALDOT utilized the input from these sessions as part of the public participation process which is cited within the final proposed DBE goal submission to the FHWA, Alabama Division. ALDOT utilized methodology cited within its DBE program agreement with FHWA, Alabama Division to compile the proposed "DBE goal".

The consultation process which ALDOT uses for goal setting also encompasses the following procedures. In accordance with 49 CFR paragraph 26.45 (g) (2) a public notice (see attachment 2-AD placed in newspapers during the June— July 2009 timeframe) is created announcing the proposed overall ALDOT DBE goal. The public is informed that the proposed goal and its rationale are available for inspection during normal business hours at the ALDOT Central Office (Gunter Annex) for 30 days following the date of the notice. The public is informed that the DBE office and ALDOT will accept comments on the goals for 45 days from the date of the notice. ALDOT encloses within the notice the address to which comments may be sent. Finally, at the end of the 45 day period, ALDOT compiles the proposed DBE goal with the approved methodology. A component of the goal setting report is the comments received by ALDOT during the time frame in which the notice was advertised in major newspapers within the state. Currently, ALDOT summarizes the comments received during the public participation stage and inserts them into the final proposed DBE goal report to FHWA, Alabama Division. The following summarized comments were obtained from the public involvement meetings and the "consultation process."

Accordingly, the following summarized comments were obtained from the public involvement meetings and the consultation process:

Comments	ALDOT Response
1. How do you come up with what a DBE can do?	Based on the history of what has been performed by DBEs in the past.
2. Is the number that is set the minimum goal or is it the absolute goal?	There is no minimum or absolute DBE goal that has to be set on a contract. The goal for a specific contract may be higher or lower than that percentage level of the overall goal. Individual DBE goals are set on contracts to meet the overall goal set

	annually.
3. Have you exceeded the goal on any line item?	In setting the specific goals for a project, ALDOT utilizes an internal committee composed of staff from varied backgrounds and experiences within the highway construction industry. This committee has over the period of time assembled a chart which is used as a guide to set goals for the various types of projects. This chart is not used solely to set project goals but as a guide along with the experience level of committee members. The chart lists general work categories which comprise a project. Cumulatively these factors are evaluated for the amount of work for each line item and the capacity DBEs have shown to perform work in those areas. In achieving the goal for the project, line item activity for that work must be achieved.
4. What areas of work does ALDOT achieve its goals in?	ALDOT achieves the majority of its goals in the area of trucking. Grassing is also a significant area in which ALDOT achieves its goal.
5. How does ALDOT determine what line items to use for each project?	ALDOT determines the line items for each project based on the work activities which are part of its construction.
6. Why is the goal set at one percentage and dropped to a lower percent right before the project is let?	The project was looked at again and it was found that the DBE's were not available. Therefore, the percentage was dropped.

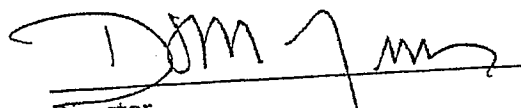
7. Why is it necessary to set individual goals on projects when there is an overall goal of 10.81%?	The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.
8. When a project goal is set, is there a certain mileage that is looked at to set the goals?	There is no demographic area looked at when the goal is being set. It is mainly pay item driven.
9. How many DBEs since the conception of the program have graduated to Prime?	Since the conception of the program, there have been 31 DBEs that have graduated to a prime contractor.
10. Would the goal committee be interested in re-evaluating how they use their goal setting process?	Yes, submit comments and suggestions.
11. What are Race Conscious and Race Neutral?	<p>Race Conscious- measure or program is one that is focused specifically on assisting only DBEs, including women owned DBEs.</p> <p>Race Neutral- measure or program is one that is, or can be, used to assist all small businesses, Race neutral includes gender neutrality.</p>

The Department also advertised the proposed DBE Goal for the 2010 fiscal year in the following newspapers throughout the state: The Montgomery Advertiser, The Press Register, The Birmingham News, and The Huntsville Times. The advertisements commenced on June 17, 2009 and ended on July 31, 2009. We received no substantial comments from our solicitations of the Alabama Road Builders Association, the Alabama DBE Contractors Association, nor from our statewide advertisements or consultations which would warrant the changing of the proposed

goal in Step 1.

Conclusion

Based on the discussion above, ALDOT proposes to establish its DBE goal for FY 2010 as 9.50% (4.40% Race Conscious, 5.10% Race Neutral).¹



Director
Alabama Department of Transportation

12/1/09

Date

Attachments:

- Attachment 1-Legal Notices and Sampling of Attendance
- Attachment 2-Public Notice
- Attachment 3-ALDOT's DBE Consultation Procedures

¹ The race conscious figures do not include consultant contracts, because ALDOT has never to date set goals on consultant contracts.

Attachment 10

Utilization Plan (Form OE-110)

Original ☐
Revised ☐

**Alabama Department of Transportation
Disadvantaged Business Enterprise (DBE) Utilization Plan**

Project Number & County: _____ Contractor Name: _____
 Setting Date: _____ Address: _____
 Contract Amount: _____
 Percent DBE Utilization Required: _____

DBE Firm Name & Certification Number	Type of Firm	Pay Item No.	Description of Work (include quantities and subcontract unit prices or the type of work and attach additional pages for details)	Dollar Amount
Name: _____				
Cert. Number: _____				
Name: _____				
Cert. Number: _____				
Name: _____				
Cert. Number: _____				
Name: _____				
Cert. Number: _____				
Name: _____				
Cert. Number: _____				
Instructions: 1. This plan must be submitted within the timeframe specified by the contract after notification of apparent low bid. 2. The plan must indicate the contractor will meet the DBE goal noted in the proposal or documentation of good faith effort must be attached. 3. Type of Firm – Contractor, Supplier, or Manufacturer			Total Dollar Amount to DBEs: \$ _____ Required Dollar Amount of DBE Utilization: \$ _____	

ALDOT Approval: _____

Date: _____

Project Number: _____

County: _____

Certification of Prime Contractor:

I do hereby agree to commit this firm to use the certified DBE subcontractor(s) to perform the above described work in this contract. I hereby certify that all DBE subcontractor activities on this contract shall be performed in accordance with the current 49CFR Part 26 Regulations. I certify that all DBE activities, both race conscious and race neutral, shall be properly reported. I further certify that the reporting of DBE activities shall be in accordance with the above Regulations.

Print name of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____

Certification of Non-DBE Subcontractor: _____

I hereby certify that my DBE Subcontractor(s) on this contract shall perform all activities in accordance with the current 49CFR Part 26 Regulations. I certify that all DBE activities, both race conscious and race neutral, shall be properly reported. I further certify that the reporting of DBE activities shall be in accordance with the above Regulations.

Print name of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____

Certification of DBE Subcontractor: _____

Address: _____

I do hereby agree to participate and perform the work described above. I have been advised of the DBE responsibilities and am available, willing and able to complete the work. I hereby certify that my activities as a DBE Subcontractor on this contract shall be performed in accordance with the Current 49CFR Part 26 Regulations. I certify that my activities, both race conscious and race neutral, shall be properly reported. I further certify that the reporting of my activities shall be in accordance with the above Regulations.

Print name of Authorized Representative: _____

Signature of Authorized Representative: _____

Date: _____

DBE Certification Number: _____

Attachment 11
UCP (When Approved)

Attachment 12

Annual Documents Needed To Maintain Certification

No Change Affidavit

I, _____, swear (or affirm) that there have been no changes in _____ circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 and 13 CFR Part 121. I swear (or affirm) there have been no material changes in the information provided in the Disadvantaged Business Enterprise program application for certification, except for any changes about which I have provided written notice to the Alabama Department of Transportation, Disadvantaged Business Enterprise program pursuant to 49 CFR § 26.83(i).

I swear (or affirm) that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear (or affirm) that my personal net worth does not exceed \$750,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear (or affirm) that _____ (name of firm) continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26. The annual gross receipts (as defined by SBA rules) over the previous three (3) fiscal years as follows:

_____	_____	Average annual gross receipts _____
_____	_____	
_____	_____	

And they do/do not exceed _____. Attached are gross receipts and tax documents to support this affidavit.

Signature: _____ **Date:** _____

On this _____ day of _____, 20____, before me appeared (name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by (name of firm) _____, to execute the affidavit and did so as his or her free act and deed.

(SEAL/STAMP)

Notary Public: _____ Commission Expires: _____

Instructions for Completing Personal Financial Statement

Personal Net Worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's net worth does not include the individual's ownership interest in an applicant firm or the individual equity in his or her primary place of residence. (**Note:** The Alabama Department of Transportation will exclude an individual's equity in his or her primary residence. ALDOT will assume, unless advised otherwise, that the equity in the primary residence is the difference between its present market value and current mortgage balance as reported by you in **Section 4** on the form. However, you must provide this information.)

Each individual owner of an applicant firm, whose ownership and control are relied upon for DBE certification, must submit a signed statement of personal net worth.

If an eligible individual has a personal net worth of \$750,000 or more, that individual is not considered socially and economically disadvantaged for purposes of this program.

If an individual is married, please note the following:

All assets and liabilities should be halved accordingly on the form if jointly held. If assets and liabilities are separately owned, these items should only be reported on the respected owner's form.

EXAMPLES:

John and Mary Smith jointly own their primary residence valued at \$200,000. They each claim 50% ownership on the property. John would only report his 50% interest, \$100,000, on his Personal Net Worth Statement.

Mary Smith has a vacation home in another state valued at \$200,000. She owns the vacation home in its entirety. John would not report this on his Personal Net Worth Statement.

The Personal Financial Statement must be filled out in its entirety leaving **no** line blank. For any section where no asset or liability exists, you may indicate \$0 as a response to a numerical question or *Not Applicable* or None as a word response. The Personal Financial Statement must be complete, legible, and accurate. If you require more space in any section, attach additional sheets, and reference the appropriate section number and heading.

ASSETS

Cash on hand & banks:

Enter the amount of cash on-hand in your checking accounts.

Savings Account:

Enter the total cash in all savings accounts.

IRA or other Retirement Accounts:

Enter the present values of all IRAs and other retirement accounts, including any Deferred and Pension Plans. That is, how much the asset is actually worth today, not what its face value is or what the individuals return on it may be at some time in the future.

Accounts & Notes Receivable

Enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm.

Life Insurance:

Enter the cash surrender value of any life insurance policies. **A complete description is required in Section 8.

Stocks and Bonds:

Enter the current market value of your stocks/bonds. ** A complete listing and description is required in Section 3.

Real Estate:

Enter the current fair market value of all real estate owned. Excluding the Business Real Estate. If the Residence is part of a farm or other large portion of real estate, submit a separate valuation for the Residence and the remaining land.

**A complete listing and description of all real estate owned is required in Section 4.

Automobile:

Enter the current fair market value of all automobiles owned.

Other Personal Property:

Enter the current fair market value of all other personal property owned, but not included in the previous sections. (i.e. furniture, jewelry, guns, cameras, electronic equipment, etc.). This category could also include motorcycles, motor home(s), boat(s) and other recreational vehicles. ** A complete description of these assets is required in Section 5.

Other Assets:

Enter the current fair market value of all other assets owned, but not included in the previous sections. ** A complete description of these assets is required in Section 5.

(Note: Other assets could be other business enterprises in which the applicant is a partial owner. For other business assets, a copy of the most recent balance sheet must be submitted along with information as to the applicant ownership share of the net worth.)

Total:

Calculate the total value of all listed assets.

LIABILITIES

Accounts Payable:

Enter the total value of all unpaid accounts payable that is your responsibility. (i.e. gas, electric, telephone bills, etc.)

Notes Payable to Bank and Others:

Enter the total amount due on all Notes Payable to Banks and others, paid on an installment basis. Please be sure to indicate the total monthly payment in the space provided. This should include the amount of any loans from the applicant firm. This should not, however, include any mortgage balances. **A complete description of all installment accounts is required in Section 2.

Loans on Life Insurance:

Enter the total value of all loans due on Life Insurance Policies. **A complete description is required in Section 8.

Mortgages on Real Estate:

Enter the total value due on all mortgage(s) payable on Real Estate. **A complete breakdown of all mortgage(s) on Real Estate is required in Section 4.

Unpaid Taxes:

Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. **A complete description is required in Section 6.

Other Liabilities:

Enter the total value due on all other liabilities not classified in the previous section. **A complete description is required in Section 7.

Total Liabilities:

Calculate the total of all listed liabilities.

Net Worth:

Calculate your net worth by subtracting your "Total Liabilities" from you "Total Assets." Indicate negative net worth with parenthesis ().

$$\begin{array}{r} + \text{ Total Assets} \\ - \text{ Total Liabilities} \\ \hline = \text{ Net Worth} \end{array}$$

Total:

Add the values enter for "Total Liabilities" and "Net Worth." This amount must equal the total value of assets.

$$\begin{array}{r} + \text{ Total Liabilities} \\ + \text{ Net Worth} \\ \hline = \text{ Total Assets} \end{array}$$

SECTION 1. SOURCE OF INCOME

Salary:

Enter the amount of your total annual salary. This includes any salary from the applicant firm and if applicable, any salary from outside employment.

Net Investment Income:

Enter the total amount of all investment income. (i.e. dividends, interest, etc.)

Real Estate Income:

Enter the total amount of all real estate income received from the sale, rental, lease, etc. of real estate held.

Other Income:

Enter the total amount of all other income received (i.e. alimony, Social Security, Pension, etc.). Please be sure to describe the source of the other income in the space provided below in this section.

CONTINGENT LIABILITIES

As Endorser or Co-Maker:

Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

Legal Claims and Judgments:

Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

Provisions for Federal Income Tax:

Enter the total amount of all Federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt:

Enter the total amount due on all remaining potential debts not accounted for.

SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency, and how secured for each note payable as entered in the "**Liabilities**" column.

SECTION 3. STOCKS AND BONDS

Enter the number of shares, names of securities, cost, fair market value, and the date of fair market value for all shares of stocks and bonds held. **(Note: Do not include your interest in the applicant firm in this section.)**

SECTION 4. REAL ESTATE OWNED

Starting with your primary residence, enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment, and status of mortgage for all real estate held. Second mortgages also should be included in this section. Please ensure that this section contains all real estate owned, including rental properties, commercial properties, etc.

These values should correspond with the "Real Estate" amount listed in the "ASSETS" column. Additionally, these values should correspond with the "Mortgages on Real Estate" amount listed in the "LIABILITIES" column.

SECTION 5. OTHER PERSONAL PROPERTY

Describe the "Other Personal Property" and "Other Assets" owned as listed in the "ASSETS" column.

SECTION 6. UNPAID TAXES

Describe in detail, as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpaid taxes listed in the "LIABILITIES" column. If none, state NONE. This section should not include the contingent tax liabilities or anticipated taxes owed for the current year.

SECTION 7. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "LIABILITIES" column. If none, state NONE.

SECTION 8. LIFE INSURANCES HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company, beneficiaries and cash surrender values of the policies.

**FINALLY, PLEASE BE SURE TO SIGN AND
DATE THE PERSONAL FINANCIAL STATEMENT
IN THE SPACE PROVIDED.**



PERSONAL FINANCIAL STATEMENT

OMB APPROVAL NO. 3245-0188
EXPIRATION DATE: 3/31/2008

U.S. SMALL BUSINESS ADMINISTRATION

As of _____, _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name	Business Phone
Residence Address	Residence Phone
City, State, Zip Code	
Business Name of Applicant/Borrower	

ASSETS (Omit Cents)	LIABILITIES (Omit Cents)
Cash on hand & in Banks.....\$ _____	Accounts Payable.....\$ _____
Savings Accounts.....\$ _____	Notes Payable to Banks and Others.....\$ _____ (Describe in Section 2)
IRA or Other Retirement Account.....\$ _____	Installment Account (Auto).....\$ _____ Mo. Payments \$ _____
Accounts & Notes Receivable.....\$ _____	Installment Account (Other).....\$ _____ Mo. Payments \$ _____
Life Insurance-Cash Surrender Value Only.....\$ _____ (Complete Section 8)	Loan on Life Insurance.....\$ _____
Stocks and Bonds.....\$ _____ (Describe in Section 3)	Mortgages on Real Estate.....\$ _____ (Describe in Section 4)
Real Estate.....\$ _____ (Describe in Section 4)	Unpaid Taxes.....\$ _____ (Describe in Section 6)
Automobile-Present Value.....\$ _____	Other Liabilities.....\$ _____ (Describe in Section 7)
Other Personal Property.....\$ _____ (Describe in Section 5)	Total Liabilities.....\$ _____
Other Assets.....\$ _____ (Describe in Section 5)	Net Worth\$ _____
Total\$ _____	Total\$ _____

Section 1. Source of Income	Contingent Liabilities
Salary.....\$ _____	As Endorser or Co-Maker.....\$ _____
Net Investment Income.....\$ _____	Legal Claims & Judgements.....\$ _____
Real Estate Income.....\$ _____	Provision for Federal Income Tax.....\$ _____
Other Income (Describe below)*.....\$ _____	Other Special Debt.....\$ _____

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)			
	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: _____ Date: _____

Signature: _____ Date: _____

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

Additionally, a Personal Net Worth Statement is to be submitted with the annual renewal documents. A copy of the PNW and instructions is included with the Certification Documents.

Attachment 13
Decertification Procedures

DBE Decertification Process

Situations arise which result in the Department considering decertification of a Disadvantaged Business Enterprise (DBE) firm.

The Alabama Department of Transportation (ALDOT) may be made aware of these or other violations of the DBE program in a variety of ways. It may be from information provided by the firm itself, information provided by a third party or information obtained by ALDOT through the normal course of business operations.

When any such information is received which may result in the Department considering decertification, it will be provided to the DBE Section of the Human Resources Bureau for action. The DBE Program Administrator may request an on-site investigation. The investigation may be conducted by the DBE representative in the Division where the firm is headquartered or working, or central office resources or any combination of the above.

If the results of the investigation indicate that decertification may be warranted, the information obtained will be provided to the DBE Review Committee for review.

Upon review, the Review Committee may determine to continue certification or decertify. In the event of a determination to decertify, the firm will be notified by certified mail (with return receipt) and provided copies of documents reviewed by the Committee. The letter will enumerate the specific reason(s) for the Committee's action. The firm will be informed of opportunity to appeal to the DBE Appeals Committee, in accordance with 49CFR 26.87(d).

If the firm chooses to appeal the Review Committee's decision, it must do so within 30 days from receipt of the notification of decertification. Failure to do so will result in a waiver of the right to appeal and the decertification will become final. Upon receipt of the request for appeal, the Chair of the DBE Appeals Committee will be notified and the appeal placed on the agenda for a subsequent Committee meeting. At the Appeals Committee meeting, a representative of the DBE Review Committee will present its findings to the Appeals Committee and the firm will be provided an opportunity to respond. A firm may not present evidence to the Appeals Committee that it did not present to the Review Committee prior to its decision or changes the firm proposes to make to fulfill the requirements of the DBE program. The DBE Appeal Committee is meeting solely to hear the presentations as to decertification.

During the presentations, the Appeals Committee may ask additional questions to clarify issues presented. The firm may choose to have counsel in attendance, however all questions will be directed to and answered by the principal of the firm except for those questions which are solely legal in nature and not factual. The principal must answer all questions related to the operations and ownership of the firm.

Subsequent to the presentations, the Appeals Committee will review the documents, presentations, and arguments. The Committee may affirm the Review Committee, reverse the Review Committee, or defer a decision pending more research. If the Committee requires additional information, it will be at the discretion of the Chair as to who is assigned to collect and provide the information to the Committee. When a final decision has been reached, the Committee Chair will notify the DBE Program Administrator who will notify the firm by certified mail, return receipt

Attachment 14
Mentor Protégé Program

B **O** **W** **D**

Introduction

Legislation

Notice

Program Guidelines

Sample Development Plan

Applications

Implementation

Pledge

Evaluation

Alabama Mentor-Protégé Program

The program staff will work with ALDOT staff and the Road Builders Association as well as other resource agencies to develop a Mentor-Protégé Program and to enroll selected DBEs into existing programs that will link them with prime contractors. The objective will be to identify prime contractors that will serve as mentors under individual, project-based agreements, with DBE firms. This will be an opportunity for the protégé firms (DBEs) to develop much needed business and technical capabilities and to diversify their overall base in the marketplace, producing more jobs and increasing income. The Mentor-Protégé Program will be customized to serve the individual DBEs based upon the needs assessment. The design of the Mentor-Protégé Program will be the responsibility of the program staff and partners in concert with the prime contractor. This will not be just a process for teaming and building acumen in the use of improved business systems and strengthening the infrastructure, but should become a means for the Protégé to become a business partner within a relationship that fosters technical progress.

Other strategies will be identified to improve revenues, employment levels and other key indicators of success. These might include matchmaking, joint ventures and other pairing appropriate for a positive prime/DBE partnership.

The program staff in concert with other appropriate partners will:

- Provide joint venture models for DBE program enrollees
- Match companies that can expand or diversify their job scopes in similar work or trade areas
- Provide opportunities to develop relationships, partnerships, interactions and networking with prime contractors, and suppliers of construction materials
- Provide opportunities to interact, network and learn the process associated with the responsibilities of state inspectors

Mentor-Protégé Programs Used as Models:



Commonwealth of Massachusetts - Affirmative Market Program



State of Wisconsin - Department of Transportation



State of Illinois - Department of Transportation



State of North Carolina - Department of Transportation

LEGISLATION

ALDOT MENTOR- PROTÉGÉ PROGRAM

LEGISLATION

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

- a. You may, or if an operating administration directs you to, must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.
- b. As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.
 1. Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
 2. During the course of the mentor-protégé relationship, you must:
 - i. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and
 - ii. Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.
 3. For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.
- c. Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

Appendix D to Part 26 -- Mentor-Protégé Program Guidelines

- A. The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.
- B.
 1. Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to

the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

2. To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

C.

DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

NOTICE

ALDOT MENTOR- PROTÉGÉ PROGRAM

NOTICE

ATTENTION: DBE Firms and Prime Contractors

The Alabama Department of Transportation (ALDOT) is pleased to announce its new Mentor- Protégé Program pilot that is scheduled to start with the _____ Lettings.

ALDOT welcomes any certified Disadvantaged Business Enterprise (DBE) firm and/or prime contractor who meets the minimum requirements of the Program to submit an application. All potential Mentors and Protégés must complete and submit their respective applications to ALDOT by the close of business _____.

Eligibility Requirements

Mentor: The firms must have at least five (5) years of experience as a contractor (preferable, but not necessary, as a prime contractor) on ALDOT highway construction contracts and agree to devote a minimum of five (5) to ten (10) hours per month to working with the Protégé.

Protégé: The firm must have at least three (3) years of experience in the highway construction industry, be a certified DBE with ALDOT and remain an eligible DBE firm throughout the duration of the Program participation.

ALDOT will complete the evaluations of submitted applications by _____. A list of those eligible for the Mentor- Protégé program will be posted on the ALDOT web site; however, ALDOT encourages all firms who are eligible to communicate at the earliest possible time with potential mentors/protégés to explore possible relationships and their benefits.

For more information on the Mentor-Protégé Program, please visit ALDOT's web site at _____ or you may contact the DBE Supportive Services Office at _____.

PROGRAM GUIDELINES

ALABAMA DEPARTMENT OF TRANSPORTATION MENTOR-PROTÉGÉ PROGRAM GUIDELINES

The primary purpose of the Mentor-Protégé Program (the "Program") is to enhance the capabilities of socially and economically disadvantaged businesses to perform prime contracts and subcontracts. The Program centers on business relationships between Mentor firms (prime contractors) and Protégé firms (socially and economically disadvantaged businesses certified as Disadvantaged Business Enterprises) to provide developmental assistance to enhance the Protégé's business and technical capabilities to do more complex work. The following guidelines shall apply to all participants in the Program:

1. Participation by both the Mentor and Protégé is strictly voluntary.
2. The Mentor-Protégé relationship is established by a signed written Development Plan (the "Plan") that outlines the parties' goals and expectations, including monitoring and reporting provisions, the duration of the relationship, and the services and resources to be provided by the Mentor to the Protégé. The Plan shall be submitted to and approved by the Alabama Department of Transportation ("ALDOT"). The following criteria shall be met in the drafting and implementation of each Development Plan:
 - Copies of the Plan shall be retained by all parties to it, ALDOT and the Federal Highway Administration's ("FHWA") Alabama Office;
 - The Plan shall clearly set forth the objectives of the parties involved;
 - The Plan shall describe measurable benchmarks to be reached by the Protégé at successive stages of the plan;
 - The Plan shall provide that if resources of the Mentor are utilized by the Protégé in the performance of prime contracts or subcontracts for the Mentor or for another contractor, the resources must be separately identified, accounted for, and compensated directly by the Protégé to the Mentor; If the plan provides for extensive use of the Mentor's resources by the Protégé, the arrangement will be closely monitored by ALDOT's Mentor-Protégé Oversight Committee;
 - The Plan may include training to be provided by the Mentor to the Protégé; training areas may include:
 - Business planning;
 - Recordkeeping;
 - Technical assistance;
 - Capital formation;
 - Loan packaging;
 - Financial counseling;
 - Bonding;
 - Equipment utilization;
 - Training in new substantive/technical areas for the Protégé;
 - The Plan may contain a provision for the Protégé to avail itself of ALDOT's Supportive Services Consultants' services in those areas the Mentor and Protégé consider appropriate;
 - The Plan shall contain a provision that it may be terminated by mutual consent or by ALDOT upon determination that:
 - The Protégé no longer meets the eligibility standards for certification as a DBE;
 - Either party has failed or is unable to meet its obligations under the Development Plan;
 - The Protégé is not progressing or is not likely to progress in accordance with the Plan;
 - The Protégé has reached a satisfactory level of self-sufficiency to compete without utilizing the Mentor-Protégé Program;

- The Plan or provisions contained in it are contrary to the requirements of Federal, state or local law or regulation;
 - The relationship has continued for the maximum allowable period of thirty-six (36) months.
 - The Plan may include a provision that the arrangement may be dissolved by either party by notifying ALDOT.
3. The Mentor must have at least five (5) years' experience as a contractor (preferably, but not necessarily as a prime contractor) on ALDOT highway construction contracts and agree to devote a minimum of five (5) to ten (10) hours per month to working with the Protégé.
 4. The Protégé must have at least three (3) years of experience in the highway construction industry, be a certified DBE (certified by ALDOT), and remain eligible for DBE certification throughout the duration of its participation.
 5. The Protégé must perform a commercially useful function in the performance of any contract with the Mentor. The Protégé must be an independent business responsible for the direct day-to-day activities of management, policy making and operations of the business and its contracts. Management, policy making and operational control include: scheduling work operations, ordering equipment and materials, preparing/submitting payrolls and other required forms, hiring, supervising and firing employees.
 6. The Mentor cannot be responsible for management of the Protégé. Administrative functions must be performed by personnel responsible to or employed by the Protégé at locations under its control.
 7. Any property, equipment, supplies or other services that are sold, rented, or donated to the Protégé must be detailed in the Plan approved by ALDOT and should further be covered by bills of sale, lease agreements, etc. Any financial investment and security arrangements by the Mentor in the Protégé are subject to approval under the Plan, and must not permit the Mentor to assume control of the Protégé.
 8. Per federal regulation, a non-DBE Mentor cannot be awarded DBE credit in excess of one half of the DBE contract goal on any single ALDOT project for using the Protégé as a sub-contractor.
 9. Per federal regulation, during the course of the Mentor-Protégé relationship a non-DBE Mentor cannot receive DBE credit towards a contract goal for using the Protégé as a sub-contractor more often than every other contract performed by the Protégé.
 10. The Mentor and the Protégé may form a joint venture to bid on contracts subject to normal joint venture approval requirements.
 11. Federal antitrust statutes are concerned with contracting arrangements that may limit competition. Any relationship in which a Mentor requires a Protégé to have an exclusive bidding agreement may violate Federal antitrust laws with respect to limiting competition. During the course of the relationship, the Protégé must have the latitude to contract with others.
 12. The Mentor will:
 - a. Sign a Development Plan with the Protégé;
 - b. Attend regularly scheduled meetings with the Protégé;
 - c. Regularly review the Protégé's business and implementation plans and key indicators such as cash flow, bonding, recently submitted bids, quotes and participation in construction projects;
 - d. Identify key organizational problems and business challenges;
 - e. Identify and acknowledge improvements in specific areas such as estimating and bidding;
 - f. Help identify needs that can be met through one-on-one supportive services consultant assistance;
 - g. Offer advice on the best ways to achieve success;
 - h. Identify critical steps towards meeting goals;
 - i. Respond promptly to the Protégé's request for assistance on significant business problems, not routine issues;

- k. Provide training in new construction industry skills to increase the Protégé's competitiveness;
 - l. Provide equipment, resources and personnel with specialized skills, provided the worker(s) is/are under the direct supervision of the Protégé;
 - m. Monitor the progress of the Plan;
 - n. Report to ALDOT regarding progress of the relationship/plan, achievements, etc. in the manner required by the Plan.
13. The Protégé will:
- a. Sign the Plan with the Mentor;
 - b. Attend regularly scheduled meetings with the Mentor and expedite specific progress steps;
 - c. Implement goals and objectives developed with the Mentor and accept reasonable suggestions to improve the management or operation of its business;
 - d. Utilize the assistance of one-on-one supportive services consultants suggested by the Mentor or ALDOT;
 - e. Share information, including:
 - i. Working capital
 - ii. Capacity, including payroll
 - iii. Total material and overhead expenses
 - iv. Net profit
 - v. Lines of credit
 - vi. Bonding aggregate limit or limit per project
 - vii. Current certificates for worker's compensation and general liability insurance
 - f. Monitor the progress of the Plan;
 - g. Report to ALDOT regarding progress of the relationship/plan, achievements, etc. in the manner required by the Plan.
14. ALDOT will:
- a. Establish a Mentor-Protégé Oversight Committee to carry out the obligations of ALDOT under this Program;
 - b. Conduct an evaluation and assessment of potential Mentors and DBEs for participation in the Program;
 - c. Assist the parties in tailoring a Plan that meets the goals of the Program within the intent of the regulations;
 - d. Augment the services provided to the Protégé by the Plan through ALDOT's network of DBE Supportive Services Consultants;
 - e. Provide on-going monitoring and inspection of approved Plans, including but not limited to mandating monthly reports of progress toward meeting the approved Plans' goals and objectives;
 - f. Provide reports as required by the FHWA regarding the conduct of the Program.
15. DBE Goals and Mentor Administrative Costs:
- a. On certain designated "larger" projects the DBE goal for participants in the Program would be 2% less than the overall stated goal, for any project on which the Mentor uses the Protégé as a DBE subcontractor. The goal reduction for participants in the Program would be contingent upon the following:
 - The Mentor- Protégé Oversight Committee will select projects eligible for the Program;
 - Eligible individual projects will have a minimum program value of \$1million and a minimum of 150 work days;
 - The goal reduction would apply only to projects with overall stated goals of 5% or more;
 - Goal reduction is prospective only;
 - The DBE Protégé must be subcontracted to, and actually perform a minimum of 2% of the total contract award in order for the Mentor to be eligible for the goal reduction.

This goal reduction will be implemented only on designated projects as a pilot for a 36 month period, in order to assess the effects of the Program. Thereafter, this measure will be reviewed by a panel consisting of the Mentor-Protégé Oversight Committee, Contract Compliance Coordinators, Regional Engineers and Directors of the DBE Supportive Services Office. At that time, the panel will draft a written summary of the Program's effects, recommend further course of action and request approval of its recommendation from FHWA.

- b. The Plan may include a fee schedule to cover the direct and indirect costs incurred by the Mentor to provide training and administrative or developmental assistance to the Protégé. The fee schedule is subject to ALDOT approval and fees are eligible for reimbursement through a special contract provision, in accordance with federal regulations. Reimbursement of administrative costs shall be permitted only in conjunction with specific projects in which the Mentor uses the Protégé as a subcontractor- whether or not the Mentor receives DBE credit for use of the Protégé as a sub.
16. The Mentor-Protégé Program is not intended to diminish or circumvent existing DBE rules or regulations, but rather is intended to increase legitimate DBE activities. Abuse of this Program may be used as the basis for action against both the Mentor and Protégé including, but not limited to, suspension or debarment.
17. Except as indicated otherwise herein, all Federal regulations, local, state and Federal statutes, in addition to ALDOT policies must be adhered to in the conduct of any mentor-protégé relationship or activities.

CERTIFICATION

The undersigned hereby certifies that s/he has received a copy of the above Mentor- Protégé Program Guidelines, and will to the best of his/her ability adhere to those guidelines.

Signed this _____ day of _____, _____

Signature
(notarized)

Name

Title

PLEASE SUBMIT COMPLETED TO:

Alabama Department of Transportation
Office of Supportive Services
Gunter Annex
Montgomery, Alabama

SAMPLE DEVELOPMENT PLAN

MENTOR-PROTÉGÉ PROGRAM

SAMPLE DEVELOPMENT PLAN

This sample development plan provides the basic structure for your Plan. Use "Plan Contents, A - H" and "Examples of Mentor Assistance" as a guide in putting together your Plan; however, the mentor-protégé relationship is not limited to the types of assistance that are included below.

Please make note of the Mentor-Protégé Program information under Section III.

I. Plan Contents

- A. **Areas of Assistance** - Identify the specific areas in which the protégé requires assistance.
- B. **Schedules of Assistance** - Define the specific types and scope of assistance the mentor will provide to meet the protégé's needs and the time frames by which the assistance will have accomplished its objective.
- C. **Responsibilities** - Define the specific responsibilities of the mentor and the protégé in each of the activities.
- D. **Benchmarks** - Include measurable benchmarks to be reached by the protégé at successive stages of the Plan.
- E. **Evaluation** - Provide formal evaluations of the protégé's attainment of the identified benchmarks. (Independent evaluations will be made by ALDOT's Mentor-Protégé Oversight Committee to confirm the protégé's attainment of said benchmarks.)
- F. **Duration** - Specify the maximum time frame for which the Plan will remain in effect (not more than three years). If a contract is subject to an approved Mentor-Protégé Agreement for Contract Assistance and Training and its duration is longer than three years, ALDOT's Mentor-Protégé Oversight Committee will review the progress at the end of the three-year period to make a determination regarding the propriety of continuing the mentor-protégé relationship beyond the maximum three-year term.
- G. **Key Personnel** - Identify the mentor's representative(s), including the experience of the identified representatives responsible for training and/or coordinating the assistance provided to the protégé.
- H. **Copies of Agreements** - Provide copies to ALDOT's Mentor-Protégé Oversight Committee of all lease agreements, rental agreements, bond payments, etc., made for the duration of the Plan. Copies of any agreements entered into by the mentor or the protégé at a later date, but during the term of the Plan, must be forwarded to the Mentor-Protégé Oversight Committee for approval within ten (10) days of execution of such agreement.

II. Examples of Mentor Assistance

Training/Development

A. The mentor agrees to provide an initial assessment of the proposed activities/skills that the protégé is able to provide at the time of entering into the Mentor-Protégé Agreement. The training/development provided to the protégé by the mentor shall be based on this preliminary assessment.

B. The mentor will also provide the protégé with periodic evaluations on the areas of training/development to be provided as identified in the initial assessment.

Technical and Management

A. Guidance in the interpretation of plans, specifications, bid documents, estimating and pricing.

B. Guidance in general money management by implementing procedures for budgeting, cash flow, bookkeeping and accounting.

C. Assistance with contract preparation and documenting and submitting change orders.

D. Assistance in obtaining bonding, insurance and meeting other business needs.

E. Assistance in establishing business relationships with necessary suppliers.

F. Familiarizing and assisting the protégé with compliance with applicable laws, rules and regulations.

Personnel

The mentor may provide skilled personnel to the protégé if the mentor receives advance written approval from ALDOT on each project.

A. Lending of personnel by the mentor to the protégé will be limited to personnel with special expertise.

B. Mentor's personnel should assist with management functions or provide technical training and/or supervision under the Plan. Personnel provided by mentor can remain on mentor's payroll.

Financial

A. The mentor-protégé arrangement may provide for early or advance payments (working capital) except where it would be inconsistent with federal or state guidelines, regulations or statutes.

B. The protégé shall be timely paid in accordance with the terms of any contract for work performed as a subcontractor, and such payments due shall not be contingent upon or subject to withholding, retainage or backcharges of any kind based upon program cost reimbursement due to the mentor pursuant to an approved Mentor-Protégé Agreement for Contract Assistance and Training incorporated into the contract.

Equipment

A. The Plan may give the protégé the option to lease equipment from the mentor as well as from third parties.

B. The mentor may assist the protégé with obtaining lines of credit.

C. All equipment leased by protégé must be needed for the current ALDOT contract.

D. The mentor may assist the protégé with obtaining the equipment and/or supplies needed to perform contract work. However, the mentor must not be responsible for the actual lease or purchase, may not provide any security for the protégé's lease or purchase and may not be financially responsible if the protégé defaults on its lease or purchase.

Attach copies of lease agreements, rental agreements, bond payments, etc., related to the Plan. List the documents attached. Any agreements entered into after approval of the Plan must be provided to ALDOT's Mentor-Protégé Oversight Committee no later than ten (10) days after execution of such agreement.

III. Other Mentor-Protégé Program Information

Relevant Skills

In every case in which an ALDOT contract is awarded to firms involved in a mentor-protégé relationship, the contract activities of the protégé should correlate with the protégé's existing skills and ongoing development as indicated in the Mentor-Protégé Program.

Modifications of Plan

ALDOT reserves the right to require changes to the Plan when ALDOT's Mentor-Protégé Oversight Committee deems it necessary to meet the goals of the Mentor-Protégé Program. In addition, the parties may make changes to the Plan with ALDOT's Mentor-Protégé Oversight Committee's prior written approval.

Supportive Services Assistance

ALDOT is offering the services of its network of supportive services consultants to its Mentor-Protégé Program. Mentors and protégés are encouraged to avail themselves of the consultants' assistance whenever necessary.

Prohibitions

The following are not permitted in mentor-protégé relationships:

A. No agreement can force the protégé into an exclusive arrangement with the mentor. As a general rule, the protégé must retain the right to contract with others during the duration of said Agreement and the Plan.

B. Under no circumstances is the mentor permitted to have an ownership interest of any kind in protégé.

C. Although there may be various levels of assistance rendered by a mentor to a protégé, no assistance can reach the level where day-to-day control has been relinquished by the protégé to the mentor.

D. The parties to a prospective mentor-protégé relationship must not proceed without a written Plan which has been reviewed and approved in advance by ALDOT's Mentor-Protégé Oversight Committee. Any activities conducted prior to the existence of a fully executed and approved Mentor-Protégé Agreement for Contract Assistance and

Training will not be credited toward any established contract DBE goal nor will the costs be reimbursable by ALDOT.

E. The DBE may never be relegated to the status of middleman, broker or front.

F. At no time shall any arrangement lead to a situation where final decision-making authority is taken away from the protégé.

Notifications/Approval Requests

All notifications, requests for approval or other communications by the mentor and/or protégé to ALDOT must be addressed to:

The Alabama Department of Transportation,
DBE Supportive Services
Mentor-Protégé Oversight Committee
Gunter Annex
Montgomery, AL

MENTORING AND DEVELOPMENT PLAN

Mentor Firm

Protégé Firm

Mentor Contact

Protégé Contact

PART 1

TRAINING PROVIDED

<i>List all areas of training that will be provided</i>	<i>Coordinate who is responsible for each area of training within the Mentor Firm and what will be accomplished.</i>	<i>Define who will receive the specific training within the Protégé Firm and what they will accomplish.</i>

TRAINING PLAN

(continued)

PART 2

1. Explain how mentoring and training will be monitored:

2. Explain how acquisition of skills will be evaluated:

MENTOR APPLICATION

ALDOT MENTOR-PROTEGE PROGRAM

MENTOR APPLICATION

(All Submitted Information Will Be Kept Confidential)

INSTRUCTIONS: Complete this form as completely as possible and attach all requested documentation.

Exception: If there is a current prequalification application on file with ALDOT which would be responsive to any of the below, so indicate in response to the question. If additional information is necessary, we will contact you.

Thank you.

1. Business Name: _____

2. ALDOT Contractor No.: _____

3.. Business address: _____

4.. Business Telephone: _____ Fax _____

5. Business Start Date: _____

6. Legal Structure: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership ☐
Other _____

7. Principals legally authorized to bind the business (provide full names of all that apply and their respective titles and indicate the individual completing this form):

9. List the names and construction/engineering experience of your key personnel (attach additional sheets or resumes if necessary):

8. Principal type(s) of work performed by the business:

9. Number of Full-Time Employees: _____

Number of Part-Time Employees: _____

10. Name of Insurance Company:
(Attach proof of insurance)

Name/Address of Insurance Agent:

Telephone Number of Insurance Agent:

Type of Insurance Coverage:

Dollar Amount of Coverage:

11. Name of Bonding Company:

Name/Address of Bonding Agent:

Telephone Number of Bonding Agent:

Bonding Limits: Single \$ _____ Aggregate \$ _____

12. Provide all of the following information for the banks/financial institutions with which the firm does business:

Name: _____

Address: _____

Telephone Number: _____

Contact Person: _____

Number of Accounts: _____

Type of Account(s): _____

Line of Credit? Yes _____ No _____ If yes, amount: \$ _____

13. Annual gross receipts for the last three (3) years:

_____ \$ _____
year

_____ \$ _____
year

_____ \$ _____
year

14. List the area(s) of expertise your firm will provide to a Protégé through this Program (e.g., area(s) of construction, estimating, cost accounting, marketing, etc.).

15. List major operating equipment your firm owns or leases (attach additional sheets if necessary).

16. List any business organizations in which you (and/or your firm) belong.

17. List your firm's prequalification work categories as listed on your Certificate of Eligibility.

18. Have you ever bid on an ALDOT project? Yes _____ No _____

19. Have you ever been awarded an ALDOT project? Yes _____ No _____

20. On a separate sheet, provide the following information for every ALDOT project your firm has completed in the past five (5) years.

(i) Project Name

(ii) Type of Project

(iii) Contract Amount (\$)

(iv) Date of Completion

(v) Completed on Time?

(vi) Any claims as a result of this project?

(vii) Indicate your status on the project as prime, sub or joint venturer.

21. Provide the number of hours your firm is prepared to devote per month by key personnel toward direct work with a Protégé firm.

Maximum hours:

Minimum hours: (5 hour minimum)

CERTIFICATION

I hereby declare that all statements made herein are true, accurate and complete to the best of my knowledge. I authorize the Alabama Department of Transportation and/or its agents to gather such information (business or personal credit information) as deemed necessary for participation in this Program. By signing this form, I also certify that neither the business nor any of its owners has any outstanding tax liens. I agree to abide by all Program guidelines or inform appropriate ALDOT officials if at any time I am unable or unwilling to do so.

Signed this _____ day of _____, _____

Signature

Name

Title

NOTARY CERTIFICATE:

Submit completed application and all accompanying documents to:

Alabama Department of Transportation
DBE Supportive Services
Gunter Annex
Montgomery, Alabama

PROTÉGÉ APPLICATION

ALDOT MENTOR-PROTEGE PROGRAM

PROTÉGÉ APPLICATION

(All Submitted Information Will Be Kept Confidential)

INSTRUCTIONS: Complete this form as completely as possible and attach all requested documentation. Exception: If there is a current prequalification application on file with ALDOT which would be responsive to any of the below, so indicate in response to the question. If additional information is necessary, we will contact you.

Thank you.

1. Business Name:

FEIN/TIN: _____ ALDOT Contractor No.: _____

2. Business address:

3. Business Telephone: _____ Facsimile: _____

4. Business Start Date: _____

5. Legal Structure: ☐ Corporation ☐ Sole Proprietorship ☐ Partnership ☐ Other _____

6. Principals legally authorized to bind the business (provide full names of all that apply and their respective titles and indicate the individual completing this form):

7. List the names and construction/engineering experience of your key personnel (attach additional sheets or resumes if necessary):

8. Principal type(s) of work performed by the business:

9. Number of Full-Time Employees: _____

Number of Part-Time Employees: _____

10. Name of Insurance Company:

(Attach proof of insurance)

Name/Address of Insurance Agent:

Telephone Number of Insurance Agent:

Type of Insurance Coverage:

Dollar Amount of Coverage:

11. Name of Bonding Company:

Name/Address of Bonding Agent:

Telephone Number of Bonding Agent:

Bonding Limits: Single \$ _____ Aggregate \$ _____

12. Provide all of the following information for the banks/financial institutions with which the firm does business:

Name: _____

Address: _____

Telephone Number: _____

Contact Person: _____

Number of Accounts: _____

Type of Account(s): _____

Line of Credit? Yes _____ No _____ If yes, amount: \$ _____

13. Annual gross receipts for the last three (3) years:

_____ \$ _____
year

_____ \$ _____
year

_____ \$ _____
year

14. List any areas in which you would like assistance through this Program (e.g., estimating, cost accounting, marketing, etc.).

15. State what you expect to gain from participation in the Program.

16. List your firm's long and short (next 12 months) term objectives.

17. Describe how your firm was initially capitalized and how it has been funded since its founding.

18. Describe any important changes in your firm (structure, ownership, management, key personnel, etc.) which have taken place during the past year and why.

19. Provide the district(s) where your firm performs work (location of your customers) and the types of customers served (corporate, individual, etc.).

20. Describe your credit and collection policy.

21. List major operating equipment your company owns or leases (attach additional sheets if necessary).

22. List any business education, short courses offered by ALDOT, or specialized education classes you or any of your key personnel have attended in the past two to three years.

23. List any business organizations in which you (and/or your firm) belong.

24. Have you ever bid on an ALDOT project? Yes _____ No _____

25. On a separate sheet, provide the following information for every project your firm has completed in the past two years (list ALDOT projects first).

(i) Project Name

(ii) Customer Name

(iii) Customer Address

(iv) Customer Contact Name

(v) Customer Telephone Number

vi) Type of Project

(vii) Contract Amount (\$)

(viii) Date of Completion

(ix) Completed on Time?

(x) Any claims as a result of this project?

(xi) Indicate your status on the project as prime, sub or joint venturer.

26. On a separate sheet, provide the following information for current work in progress (list ALDOT projects first).

(i) Project Name

(ii) Customer Name

(iii) Customer Address

(iv) Customer Contact Name

(v) Customer Telephone Number

(vi) Type of Project

(vii) Contract Amount (\$)

(viii) Expected Date of Completion

(ix) Indicate your status on the project as prime, sub or joint venturer.

27. On what date did your firm first become certified? _____

Certifying Agency**:

Certified Area(s) of Specialty:

** Provide a copy of the letter or certificate which establishes that your firm is currently a certified DBE.

CERTIFICATION

I hereby declare that all statements made herein are true, accurate and complete to the best of my knowledge. I authorize the Alabama Department of Transportation and/or its agents to gather such information (business or personal credit information) as deemed necessary for participation in this Program. By signing this form, I also certify that neither the business nor any of its owners has any outstanding tax liens. I agree to abide by all Program guidelines or inform appropriate ALDOT officials if at any time I am unable or unwilling to do so.

Signed this _____ day of _____, _____

Signature

Name

Title

NOTARY CERTIFICATE:

Submit completed application and all accompanying documents to:

Alabama Department of Transportation
DBE Supportive Services
Gunter Annex
Montgomery, Alabama

IMPLEMENTATION

BOWD MENTOR-PROTEGE PROGRAM

IMPLEMENTATION

This document serves as the Program Guidelines of the Mentor-Protégé Program.

Enrollment in the Program

All parties wishing to participate in the Mentor-Protégé Program shall complete the appropriate applications (either Mentor or Protégé Application) provided by the Alabama Department of Transportation (ALDOT). The completed application shall be accompanied by all supporting documentation required within the application form. The application and documentation shall be submitted as indicated in the body of the form. BOWD shall verify whether the applicant meets the Program's minimum qualifications for acting as either a Mentor or Protégé. Each party shall be notified in writing, within thirty (30) days of submission of its application (date of actual receipt by ALDOT), whether it has been deemed eligible to participate in the Program.

Following notification that an applicant has been deemed qualified to participate in the Program; the applicant must execute a Mentor-Protégé Program Contract (Contract). This Contract shall constitute the applicant's certification that its principal has received, reviewed and agreed to abide by the spirit of and all rules of the Program. This signed Contract shall also act as the applicant's formal enrollment in the Mentor-Protégé Program. The Contract acts as ALDOT's certification that the applicant is suitable for participation in the Program and will abide by all Guidelines. This Contract and certification may be revoked by ALDOT for cause as specified below.

Commencing the Relationship

All Mentor-Protégé relationships will commence with the signing of a written Mentor-Protégé Development Plan (Plan). The Plan shall be submitted to ALDOT's Mentor-Protégé Oversight Committee (Committee) for review. The parties may request, in writing, the assistance of the Committee in drafting an appropriate Plan. A sample Plan shall be made available to participants upon request.

Within thirty (30) days of receipt, the Committee shall notify the parties of its acceptance or rejection of the terms of the proposed Plan. Reasons for rejection of a Plan shall be explained in writing to both parties. Specific criteria for content and implementation of the Plan are delineated in the attached Guidelines. Participants shall be given every opportunity to cure any defects in their proposed Plan until it is approved by the Committee. The Plan shall be deemed effective on the date that the Committee sends written notification of its approval of the Plan.

ALDOT Oversight

ALDOT oversight shall be conducted by the Committee. The Committee shall be the "working arm" of the Mentor-Protégé Program. The Committee shall consist of a minimum of eight individuals, (6) ALDOT personnel (2) from its DBE Supportive Services Office (2) from its State Office Construction Bureau (1) from the Construction Bureau where the project is located (1) from its Office of Engineer Bureau (1) from its Contract Compliance Bureau (1) advisory FHWA ex-officio representative and the Director of the Alabama BOWD Program.

The Committee shall require the parties to submit monthly progress reports, indicating the status of their progress toward each of the Plan's stated goals. The reports will indicate the steps taken during the month to further the Plan. The reports shall also list all projects for which the Mentor has received (or applied for) DBE credit for using the Protégé as a DBE subcontractor.

The monthly reports must be signed and dated by an authorized principal of each firm.

The Mentor and Protégé shall each submit an annual report regarding the Program and accomplishments for the year. Both the Mentor and Protégé shall indicate in their reports the status of each goal outlined in the Plan, accomplishments, and how the mentor specifically assisted the Protégé in reaching the stated goal/accomplishment.

Failure to timely submit reports, or submission of incomplete reports is possible grounds for dissolution of relationship. If at any time the Committee determines that the Guidelines of the Program or the spirit thereof are not being adhered to by the parties or that satisfactory progress is not being made, the Committee reserves the right to revoke its approval of the relationship - thereby invalidating the Plan, and/or any individual participant's enrollment in the Program.

Reasonable progress will be expected, though this will vary according to each Plan. A finding that the parties have failed to make reasonable progress toward goals stated in the Plan shall be communicated with the parties, in writing, within fifteen (15) days of submission of the report.

If one report (or failure to submit a report) indicates a failure to progress as expected by the Committee, the parties shall be given written notice that the Mentor-Protégé relationship is in jeopardy of being revoked and the underlying reasons. The parties shall be given an additional month to rectify their prior inaction or failure to progress. Two successive months deemed not to have yielded reasonable progress shall be grounds for revocation of the relationship.

The Committee will annually evaluate the Mentor-Protégé relationship using the following criteria:

- Satisfactory progress toward the stated goals of the Plan;
- Improved competency of the Protégé in specific aspects of highway contracting;
- Decreased reliance on the Mentor by the Protégé for equipment, personnel, capital;
- Increased capital and/or financial/bonding capacity; and
- Increased numbers of projects with contractors other than the Mentor and/or increased bids submitted as a prime contractor.

Program participants agree that interpretation of the Guidelines or regulations shall rest with the Committee. Parties may feel free (and in fact are encouraged) to seek interpretation of any provision they find ambiguous or confusing. If both Participants so desire, they may jointly appeal any adverse Committee decisions to the Director of the Alabama Department of Transportation for reconsideration. These requests shall be in writing. The Director's determination shall be final.

Because involvement of both Mentor and Protégé industry representatives is critical to the success of the Program, overall guiding policy determinations shall be reviewed by the BOWD Advisory Committee prior to implementation whenever possible. This Sub-Committee shall consist of representatives from organizations including, but not limited to, the Alabama Road Builders Association, The Alabama DBE Association, ALDOT and FHWA (in an ex-officio, advisory role) personnel. Policy considerations, questions, comments, etc., shall be presented to the Advisory Committee from a variety of sources: the Mentor- Protégé Oversight Committee, individual Mentors and Protégés.

The Advisory Committee shall make policy recommendations the Mentor- Protégé Oversight Committee.

DBE Goals and Administrative Costs

DBE goals shall be determined as delineated in the Guidelines with regard to projects in which it uses the Protégé as a subcontractor. When submitting a DBE Utilization Plan, the Mentor shall

indicate in the appropriate place whether the Mentor will be using the Protégé as a subcontractor and to what extent. This will ensure that appropriate credit is given to the Mentor for that project's DBE goal. A fully executed and approved Plan must be in place at the time of submission of the Utilization Plan in order for a Mentor-Protégé relationship to be recognized in connection with any particular project. All federal regulations must be adhered to in the use of the Protégé as a DBE subcontractor. The goal reduction shall not be permitted unless the DBE successfully completes the work delineated in the Utilization Plan. Also, the goal reduction shall only be permitted upon certification by both parties that the Mentor has spent the required monthly minimum amount of time working with the Protégé pursuant to the Plan during any preceding quarters. Last, while a Mentor may have an approved relationship with more than one Protégé at a time, goal reduction shall not be cumulative on any single project, no matter how many Protégés act as subcontractors on that project.

Any monetary recompense (for administrative costs as permitted by federal regulations) to the Mentor for participation in the Program shall be specifically delineated in the Plan.

Reimbursement of administrative costs shall be permitted only in conjunction with specific projects in which the Mentor uses the Protégé as a subcontractor- whether or not the Mentor receives DBE credit for use of the Protégé as a sub.

Billing for this reimbursement shall be submitted to ADOT in accordance with the Guidelines and shall be verified (signed) by both the Mentor and the Protégé.

Terminating the Relationship

Reasons for terminating the relationship are delineated herein and within the attached Guidelines. The relationship may be terminated by either party or the Committee. The relationship may not exceed thirty-six (36) months in duration. Any party requesting termination of the relationship (for reasons other than the expiration of the thirty-six month period) shall send written notice of its intent to the other party and ALDOT. Similarly, the Committee shall notify both parties in writing of its intent to end the relationship. A relationship shall be deemed terminated effective on the date that written notification of the termination has been sent by any party or the Committee - this date shall be evidenced by postmark, date/time stamp of electronic mail, date of correspondence, etc. The Committee's decision to terminate a relationship is final.

Re-enrollment

Unless a participant is debarred from participation in the Program by ALDOT, either party may remain enrolled in the Program following termination of a Plan due to expiration of the thirty-six (36) month deadline. Either party remains eligible to enter into a new Plan with a participant other than one with whom they have previously completed a relationship. One exception to this requirement: the parties may enter a Plan with a participant with whom they have previously had a Mentor-Protégé relationship if the prior Plan did not reach the thirty-six (36) month deadline and the Plan was not terminated by ALDOT for violation of these or federal regulations.

Inquiries

Any questions regarding the Program or its Guidelines shall be directed to:
Alabama Department of Transportation
Office of DBE Supportive Services
Gunter Annex
Montgomery, Alabama

PLEDGE

**ALDOT MENTOR-PROTEGE PROGRAM
PLEDGE**

[Date]

(name of firm)

Congratulations!

This PLEDGE signifies that the Alabama Department of Transportation (ALDOT) has found you qualified to participate in its Mentor-Protégé Program. Attached is a copy of the Mentor-Protégé Program Guidelines (Guidelines) and the Mentor-Protégé Implementation forms. Please carefully review each provision of those documents, as your signature below constitutes your affirmation that you will abide by the spirit and the letter of all rules and Guidelines of the Program.

If you have any questions or concerns regarding this form or the Guidelines and procedures, please contact ALDOT's DBE Supportive Services at 334-229-4724.

Participants agree that the Mentor-Protégé Oversight Committee's interpretation of the Guidelines and procedures shall govern. In turn, ALDOT pledges to provide all reasonable assistance to the Mentor and Protégé in order to aid in their successful participation in the Program.

CERTIFICATION

The undersigned does hereby certify that s/he is a principal of the above-named firm, has read the Guidelines and Implementation documents and agrees to abide by the same for as long as s/he or the firm represented continues to be enrolled in the Program.

Signature of Principal Name of Firm

Printed Name of Principal

Date

EVALUATION

MENTORING EVALUATION PLAN

To ensure goals and objectivities are met, quarterly reports will be submitted to the Alabama DBE Supportive Services Office the 10th of each month and be approved by ALDOT. The report will include the following information:

- List of objectives
- The objectives to be accomplished in the quarter
- Number of Direct Contacts between the Mentor and the Protégé
- Number of the Mentor's Visits to the Protégé
- Number of Telephone calls and E-mails between the Mentor and the Protégé

This report will be submitted together by the mentor and the protégé and will be signed by both.

In addition to the joint quarterly report, the mentor and the protégé will submit separate reports that will address the following:

- Evaluation of Mentoring to date
- What was successful
- What needs improvement
- Suggestions to modify the Development Plan

There will also be quarterly on-site evaluations conducted with both the Mentor and the Protégé to verify participation and progress. Among the areas evaluated during the quarterly on-site visits will be:

- Areas in which training has been provided
- Who has been trained and what has been accomplished
- Areas in which other skills have been acquired
- Who has acquired the skills and what has been accomplished

Examples of forms to be used are included.

ALDOT
Mentor Protégé Program
Developmental Action Plan
QUARTERLY REPORT

Date Submitted: _____

Mentor Firm: _____

Protégé Firm: _____

INSTRUCTIONS

1. This Quarterly Report has two sections: the **Work Plan** and the narrative **Progress Report**.
2. Work Plan responses are written by the Protégé, with collaboration from the Mentor.
3. The narrative Progress Report is to be completed separately by both the Protégé and his or her Mentor.
4. Please work in this template, and do not re-format any portion.
5. Both parts of the Report are to be submitted to John Huffman, DBE Coordinator – Supportive Services, Alabama Department of Transportation, 2720 Gunter Park Drive West, Montgomery, Alabama 36109 by the 10th.
6. If possible, the quarterly report and all attachments may be sent in electronic format (electronic signatures accepted) to:
huffmanjo@dot.state.al.us

SECTION I: The Work Plan

1. The "completed" Work Plan is one on which you have provided detailed information about progress toward meeting the deliverables identified in the Developmental Action Plan for this quarter only.
2. Responses in Column B are applicable to the reporting quarter (1st Quarter, 2nd Quarter, etc.)
3. Please indicate if your work toward meeting a quarterly goal has been postponed ("work to meet this objective has been postponed until Quarter _____ due to _____."
4. If the work was done in a previous quarter, make that into a statement to correspond to the current Quarter.
5. Only respond about actions taken in meeting the particular objective you are writing about.

SECTION II: The Progress Report (narrative)

Challenges (to be completed by both the Protégé and Mentor separately)

*Describe any challenges encountered during this reporting period. Be sure to include whether challenges have been resolved, or, if they remain unresolved and the plans to address them.
(If none, just include "none" here)*

Accomplishments (to be completed by both the Protégé and Mentor separately)

*Describe any accomplishments achieved this reporting period. Be sure to include how the accomplishment was achieved, what resources/guidance the Mentor was able to provide toward achieving the accomplishment.
(If none, just include "none" here)*

➤ Number of Protégé visits to Mentor office and/or Job Site _____

➤ Number of Mentor Visits to Protégé office and/or Job Site _____

➤ Number of Phone Calls _____

➤ Number of E-Mails _____

Additional Comments:

(ONLY THE SIGNATURE OF THE PARTY COMPLETING THIS FORM IS REQUIRED)

Signed: _____
Protégé

Date: _____

Signed: _____
Mentor

Date: _____

ALDOT Reviewer: _____

Date: _____

ALABAMA DEPARTMENT OF TRANSPORTATION

MENTOR PROTÉGÉ WORK PLAN

Protégé _____
Mentor _____

COLUMN A	COLUMN B	COLUMN C	COLUMN D
Deliverables Identified in the Developmental Action Plan	Meeting Description Where, When, How	Planned Period of Work	Summary of Accomplished Objectives

MENTORING Evaluation Form

Mentor Firm

Protégé Firm

Mentor Contact

Protégé Contact

Evaluation of Mentoring to Date: _____

What was Successful: _____

What Needs Improvement: _____

Modifications to Training Plan: _____

Mentor Representative

Protégé Representative

Program Monitoring Representative

MENTORING Evaluation Form

Mentor Firm

Protégé Firm

Mentor Contact

Protégé Contact

1. Mentor Responsibilities

2. Mentor Requirements

3. Protégé Responsibilities

4. Protégé Requirements

5. Describe how Mentoring will take Place:

6. Specific Projects to use for Mentoring Purposes:

7. Other Agreements
